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№. 10-695

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In The
Supreme Court of the United States

MARK D. LAY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

BRIEF OF THE *AMICUS CURIAE* OF GERALD SHERWIN, ERIC CARMICHAEL, PASCAL NARDELLI, TRACY FOSTER, BRUCE GOODE, LEROY THOMPSON, DR. CLAUD ANDERSON AND THE HARVEST INSTITUTE

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December, 2010

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BRIEF *AMICUS CURIAE* OF GERALD SHERWIN, ERIC CARMICHAEL, PASCAL NARDELLI, TRACY FOSTER, BRUCE GOODE, LEROY THOMPSON, DR. CLAUD ANDERSON AND THE HARVEST INSTITUTE

STATEMENT OF INTEREST OF AMICUS[1]

The individuals who have joined in the filing of this amicus brief are investment, academic and business professionals who desire to bring to the Court's attention an unprecedented employment

[1]In accordance with the provisions of Supreme Court Rule 37.6, it is hereby disclosed that counsel for Petitioner provided input to this brief of *amicus curiae* and also made a monetary contribution to the cost of printing. Other than counsel for Petitioner,no person other than the *amicus curiae* or their counsel contributed to preparation or submission of the brief. Pursuant to Rule 37.2(a), counsel of record for both parties received timely notice of amici's intent to file this brief. Letters from the parties consenting to the filing of this brief are on file with the Court.

by the United States of federal criminal securities laws to reach conduct by an African American investment manager, that when engaged in by non African American investment advisers heretofore, was treated as purely tortious, if anything. The conviction of Petitioner, Mark Lay, implies that it is a criminal offense for an African American investment adviser to lose a large sum of money in the market, notwithstanding the absence of theft, embezzlement or any form whatsoever of personal gain.[2] Mr. Lay was prosecuted for his handling of an investment by the Ohio Bureau of Workers Compensation (OBWC), that it is questionable that Ohio officials were authorized to make. There is a widely held perception that Mr. Lay's prosecution was racially and politically motivated and that Mr. Lay has been made a scapegoat for the misdeeds of certain high level Ohio officials. Accordingly, we desire for the Court

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[2]It should be noted that Mr. Lay received fees for his activity as a hedge fund investment adviser, but these fees were paid by the fund, not the investors. There was no churning allegation against Mr. Lay. Fees paid to Long Fund Advisers greatly exceeded those paid by ADF.

to review Mr. Lay's conviction as a matter of racial justice and fairness.

Set forth below is an individual list of the signatories with a description of their credentials and relationships to Mr. Lay.

1. Eric Carmichael Eric Carmichael has been in the investment industry since 1985. During his career he has actively been involved in both the investment banking and institutional brokerage sectors of the industry. In 1990, he established the Columbus, Ohio office for a national minority-owned investment firm.

   He provided brokerage services to the OBWC since 1992. He met Mr. Lay during the early 2000's and built both a friendship and business relationship whereby Mr. Carmichael's firm provided brokerage to MDL Capital Management.

2. Gerry Sherwin graduated from Columbia College in 1955 with concentration in Humanities and Government (Political Science). He served in US Army for two years and is currently a Marketing and Communications Consultant. He was formerly Senior Partner in Charge of Professional Development for six years at Bozell Group, has forty-five years of experience in Communications and

Marketing, and has held senior positions with Grey Advertising, Block Drug Company, Lehn & Fink, Bozell, WINS Radio.

Mr. Sherwin has known Mark Lay since he entered Columbia in 1981 when he was President of the Columbia Men's Basketball team and Mr. Lay was an undergraduate, and Captain of the men's basketball team. They continued their friendship after Mr. Lay graduated and stayed in touch whenever Mr. Lay came back to New York on business and to visit old friends. Mark Lay is someone Mr. Sherwin feels he can truly rely on--considerate, intelligent, are words that describe him--a friend of the highest order.

3. Pascal M. Nardelli, Managing Member, Castlebrook Development Group, LLC, Principal

4. Tracy Foster is the owner of P & W Foreign Cars and South Hills Audi, both located in Pittsburgh, Pennsylvania. Ms. Foster also owns Woodson Motor Sports in Ft. Wayne, Indiana. Ms. Foster has been a business associate of Mr. Lay for nearly a decade.

5. Bruce Goode is an investment banker and owner of Goode Investments located in Cleveland, Ohio.

6. Leroy Thompson is President/Chief Manager, BDT Development & Management, LLC, a real estate development and construction management firm with offices located in Pittsburgh, Pennsylvania and Knoxville, Tennessee. Mr. Thompson has known Mr. Lay for several years both personally and professionally. In all of our interactions, I have found Mr. Lay to be of sound judgment and character with the highest regard to professionalism. It is impossible for me to believe that Mr. Lay could have knowingly committed the serious crimes that he was charged and ultimately convicted of in federal court.

7. The Harvest Institute is a non-profit, tax exempt research educational, policy and advocacy organization located in Washington, D.C. and founded in 1993. Its mission is to engage in activities that lead to a Black America that is self-sufficient and competitive as a group within the next decade. Its founder is Dr. Claud Anderson, author of *Black Labor, White Wealth: A Search for Power and Economic Justice and PowerNomics: The National Plan to Empower Black America.*

The signatories to this brief have longstanding personal relationships with Mr. Lay.

It has been established unequivocally that Mr. Lay did not realize personal gain from the conduct which resulted in his conviction. However, critical exculpatory information probative of the political dimension to Mr. Lay's prosecution was excluded from evidence, namely a memorandum from the Ohio Bureau of Worker's Compensation Chief Investment Officer indicating that a high level cover-up of losses from OBWC investments took place. See, Appendix A. Also, included in this brief at Appendix B is the investment guideline applicable to OBWC investment advisors, which establishes tha the conduct for which Mr. Lay was prosecuted was not cognizable under the antifraud provisions of the Investment Advisers Act of 1940, 15 U.S.C. §80b-6, for the reason Mr. Lay was not an investment adviser to OBWC in relation to ADF and that Mr. Lay did not use the mails or wires in a scheme to defraud OBWC of money or property.

The signatories primary interest in this appeal is fairness. Losses in the marketplace, without more, historically have not resulted in criminal prosecutions and convictions in the financial industry. The Court should review Mr. Lay's case for the reason it stands out as an exception to the

treatment ordinarily accorded to investment advisers.

Lastly, the signatories urge review by the United States Supreme Court for the reason Mr. Lay's conviction represents an unprecedented extension of the Investment Adviser's Fraud statute, 15 U.S.C. §80b-6, to include claims by hedge fund investors against hedge fund advisers, and has created a conflict among the circuit courts of appeal.

ARGUMENT

A. Mr. Lay's Relationship To The State Of Ohio Bureau Of Workers Compensation

MDL Capital Management, Inc. (hereinafter "MDL") became an investment adviser to the Ohio Bureau of Workers Compensation ("OBWC") on May 14, 1998. See, Appendix B. Petitioner Mark D. Lay, was the Chairman and Chief Executive Officer of MDL. The agreement at Appendix B is the only investment adviser agreement between "OBWC" and "MDL".

In 2002 Petitioner formed the MDL Active Duration Fund ("ADF"). A separate investment adviser agreement was entered into between MDL

and ADF. See, Appendix C. Although OBWC invested in ADF, there was no investment advisers agreement between MDL and OBWC as it related to ADF for the reason it was known to both OBWC and MDL, that MDL would be ADF's investment advisor and that OBWC would merely be an investor in ADF. The investment advisers agreement between MDL and OBWC, Appendix B, specifically prohibited MDL, in its capacity as an investment adviser for OBWC, from investing OBWC funds in private placement securities such as ADF. In point of fact, the MDL-OBWC investment advisers agreement states, in pertinent part:

SCHEDULE A TO
INVESTMENT MANAGEMENT AGREEMENT

Client: State of Ohio, Bureau of Workers' Compensation Investment Manager: MDL Capital Management

INVESTMENT GUIDELINES
Active Duration Fixed Income Management

Statement of Purpose

The purpose of these guidelines is to:

establish the investment objective and performance standards of the Investment Account,

ensure that Investment Manager has the capability to evaluate the risk of all financial instruments in which the Investment Account is invested, and prevent Investment Manager from exposing the Investment Account to excessive overall levels of risk, exposure to inappropriate risk sources, or disproportionate exposure to any one risk source.

Investment Objective

The basic objective is to attain the highest total return consistent with a reasonable degree of risk by investing in fixed income securities. Success in achieving that objective will be measured by comparing the risk adjusted return and the after-fee return of the Investment Account to the Lehman Brothers Aggregate Bond Index...

Prohibited Securities

Dollar denominated foreign debt securities such as Yankees and Brady Bonds are prohibited

Securities denominated in currencies other than the U.S. dollar (non-dollar bonds) are prohibited

Private placements are prohibited except for 144A securities with registration

High yield securities are prohibited

> Use of inverse floaters, other exotic derivatives and reverse repurchase agreements is prohibited
> 144A securities without registration rights are prohibited
> Use of Eurodollar futures and options is prohibited
> Use of listed U.S. fixed income futures and options contracts is prohibited.

See, Schedule A, to Appendix B. (Emphasis added.)

Under the above guidelines Petitioner was not, in his capacity as an investment advisor for OBWC, permitted to invest OBWC funds into a private placement such as ADF. Accordingly, OBWC, a sophisticated investor, invested directly into ADF, in a series of separate and distinct investments that were not governed by Appendix B, but instead by the terms of a private placement memorandum ("PPM") and subscription agreement. It is clear from these documents, that MDL was not OBWC's investment advisor as it related to ADF and that OBWC knew it. OBWC, a sophisticated investor, had no investment advisor as it related to ADF, but wanted to take the risk of a hedge fund investment, on its own, as an overlay strategy.

The PPM that governed OBVC's investment into ADF made clear that MDL was not its investment adviser in relation to ADF. The PPM states:

> The Fund's investment adviser is MDL Capital Management, Inc. a Pennsylvania corporation ("MDL") or the "Investment Adviser"). The Investment Adviser will provide investment advisory services to the Fund and will be responsible for the overall management of the Fund's portfolio. The Investment Adviser is registered as an investment adviser with the U.S. Securities and Exchange Commission (the "SEC") under the Investment Advisors Act of 1940 (the "Advisers Act)|")...
>
> **DESCRIPTION OF THE ADVISORY AGREEMENT**
>
> The Fund has entered into an Advisory Agreement with the Investment Advisor. The Advisory Agreement provides that the Investment Advisor shall have broad discretion to direct and manage the Fund's investments. Subject to the approval of the Directors, the Investment Advisor may allocate all or a portion of the Fund's assets to the Master Fund, although it

is not required to do so. The compensation terms are set forth in "Charges to the Fund." The Investment Advisor may elect in its sole discretion, to defer payment of all or a portion of its Management Fee and Incentive Fees for a period of up to 10 years from the date payment is due. The Advisory Agreement also provides that the Fund will indemnify the Investment Adviser and its officers, employees and controlling persons from any liabilities, damages costs or expenses relating to the business or activities undertaken on behalf of the Fund, provided that such conduct does not constitute fraud, gross negligence, bad faith, willful misconduct, a willful material breach of the Advisory Agreement or will full violation of any material law, and provided that such indemnification obligation shall not apply to any liabilities, costs or expenses imposed on the Investment Advisor or its affiliates under the Securities Act (to the extent such indemnification would be contrary to public policy) or under ERISA. The Advisory Agreement further provides that the indemnified parties shall not be liable to the Fund in connection with its services in the absence of

> fraud, willful default, bad faith, gross negligence or reckless disregard of its obligations or duties under the agreement.
>
> In the Advisory Agreement, the Investment Advisor represents and acknowledges, among other things that (a) the Investment Advisor is a registered investment advisor, (b) that it is a fiduciary under ERISA with respect to ERISA plans investing in the Fund, (c) that it is a "Qualified Professional Asset Manager," (d) that it has complied and will continue to comply with applicable governmental regulations and (e) that it will not cause the Company to enter into any "prohibited transaction" under ERISA. Either party may terminate the Advisory Agreement on 90 days prior written notice to the other party.

Notwithstanding all of the above the Sixth Circuit, in conflict with every other court that has addressed this issue, most notably the District of Columbia Court of Appeals in Goldstein v. SEC, 451 F. 3d 873 (D.C. Cir. 2006) determined that Mr. Lay was the investment adviser to both ADF, a hedge fund, and OBWC, an investor in ADF. This finding is

unprecedented and threatens to cause chaos and uncertainty in financial markets.

B. **Hedge Funds Are For Sophisticated Investors**

Hedge funds by design and nature are for sophisticated investors. Because they are unregulated and have limited investors they require investors to meet (and sign off on minimum) standards or criteria. See, Subscription Agreement. For example, they require investors to be institutions, meet certain minimum net worth requirements (usually $1 to 2.0 million) or annual income of $200,000.00 or more. Id.

By mandating that these investors in hedge funds are indeed sophisticated, the hedge fund cuts down on the questions, concerns or servicing that a publicly traded fund might require. Further, they invite less scrutiny from any regulators or overseers as everyone is assumed to be "a big boy" and can take care of themselves and their interests.

C. **The MDL Fund Was Designed To Be A Real "Hedge"**

In addition to MDL, the Ohio Bureau of Worker's Compensation (OBWC) had dozens of investment managers who managed fixed income (bond) portfolios. These managers could invest in

bonds by buying them, collecting the interest payments, holding them to maturity or perhaps selling the bonds if they increased in value. These managers are referred to as "long only" managers.

ADF was designed to actually protect the OBWC bond portfolios as a hedge against falling bond prices which would therefore cause the bonds to lose principal value. It was a step OBWC took as a sophisticated investor however, not upon the advise of Mr. Lay.

Typically, when interest rates rise, the principal value (underlying value) of a bond would go down. Where a bond's interest rate is fixed (set) as other bonds yield more, they are worth more in the market.

ADF was by design allowed to use leverage (borrow money or securities) and allowed to go short (sell bonds which it did not own). With a short position, the investor is selling a security which he doesn't currently own; with the expectation that they will be able to buy the security back later at a lower price. As most people know, one of the best ways to make money as an investor is to "buy low and sell high." With a shorting strategy it is exactly the same except that the investor reverses the

traditional order and "sells high" first, then seeks to "buy low."

As shorting and leverage was not allowed for the other fixed income managers, they were expected to have a tough time in the market; if interest rates were to rise their portfolios were expected to lose money (principal). The original design of ADF was that it would make money to balance or hedge losses in the other fixed income portfolios managed by the other firms.

D. A Simple Bet On Interest Rates

During the time of the establishment of ADF, the Federal Reserve (at the time, headed by Mr. Alan Greenspan) was expected to raise short term interest rates.

In a typical yield curve environment, the longer money is invested, the more interest an investor would demand. So a six month investment would be a much lower yielding instrument than a two year investment and they would both be significantly lower yielding than say, a ten year investment.

Given these mechanics, when the Federal Reserve raised short term rates, then the natural assumption would be that longer term rates would also rise in some proportion to these shorter term

rates. Some market watchers would say they rose in sympathy to shorter rates.

Likely 90 to 95 percent of the time, this would make sense. As such, most investment firms and money managers made the same assessments and "bets" on the future directions of long term rates that Mr. Lay and ADF. Much like Mr. Lay and ADF, most of these firms on "The Street" lost money on the same trade, or with the same strategy.

Instead of rising significantly, or proportionally, the yield curve essentially "flattened" out, meaning that graphically, the spread or differences between short term and long term rates were smaller and the gap narrowed.

Even Alan Greenspan when asked by congressional questioners about this unusual interest rate movement lamented that he was as surprised and perplexed as every other market watcher was at the results.

E. MDL One Of OBWC's Most Successful

MDL had been one of OBWC's most successful fixed income advisers. MDL consistently out performed competitors in their asset class and out paced their assigned bench marks or comparable indices. The firm outperformed both

larger and smaller investment managers and institutions from around the country.

To a large degree, MDL was known to have a good understanding of the fixed income markets and known to make more significant "bets" in interest rates and the fluctuating prices of bonds. Fortunately for the OBWC these bets usually paid off handsomely.

F. Why Invest More Money?

Initially, OBWC invested $100 million in ADF. Given market conditions and the leverage used, this initial investment was lost in the market quickly.

After losing the first $100 million then additional allocations were made of another $100 million and $25 million more. History has shown that the vast majority of these funds were lost as well with OBWC retaining only about $9 million of the total money invested in ADF.

Most intelligent/logical people would agree that one would not make the second and third investments, if they felt that they were wronged. This would be especially true for seasoned investment professionals.

G. Investment Advisor Or Not

The prosecution of Mr. Lay under the antifraud provisions of the Investment Advisors Act, required Mr. Lay to be the investment adviser for OBWC in relation to ADF. OBWC was merely an investor into ADF. The failure of the Sixth Circuit to acknowledge and enforce this critical distinction portends chaos for financial markets. The Sixth Circuit has basically determined that notwithstanding clear language in a PPM and subscription agreement and the lack of an investment advisors agreement, if there is any history of an investment advisor relationship between a hedge fund investment adviser and an investor into this hedge fund, a jury or court may find that the investor is entitled to treatment as a client with all of the protections and restrictions applicable under federal securities laws to nonexempt investments. This conclusion totally undermines the rationale for Congressional recognition of the class of exempt investments known as hedge funds. The Sixth Circuit has ruled that hedge fund investors may have their cake and eat it too. That is, seek high rewards from a risky exempt investment, but then fall back on nonexempt regulatory protection if the investment

fails. The opinion of the Sixth Circuit in this connection is totally illogical. The Sixth Circuit opinion will create chaos in financial markets. It will cause investment advisors to be subjected to criminal liability for conduct in connection with exempt investment vehicles, specifically authorized by Congress to be formed for use by sophisticated investors capable of looking out for themselves. The Sixth Circuit opinion creates heretofore unknown criminal liability.

H. Mail And Wire Fraud

Petitioner's conviction should also be reversed for the simple reason OBWC did not part with money or property as a result of a use of the mail or wires in a scheme to defraud. OBWC parted with $225 Million dollars when it made three separate and distinct investments into ADF. Not when Mr. Lay conducted trades.

The prosecution of Mark Lay was nothing more than a means to make someone pay for the unfortunate losses that resulted from a failed investment strategy as far as ADF was concerned. OBWC's Long Fund continued to prosper and Mr. Lay continued as a Long Fund manager even after ADF was closed.

Given the allegations in the McLean memo at Appendix A and the Goldstein opinion, it is critical for the Court to accord further review to this case. It is unseemly for the securities law to be extended in the manner done here, where the defendant is a bright young African American, but the conduct that he is accused of engaging in never before resulted in prosecution.

CONCLUSION

The amicus curiae here respectfully request that the Court grant certiorari.

December 28, 2010.

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APPENDIX

OTHER:

Memorandum of OBWC,
Chief Investment Officer
James Scott McLean . . . . . A1 - A38

Investment Management
Agreement between Ohio
Bureau of Workers' Compensation
and MDL Capital Management, Inc. . . . B1 - B30

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Consent of Acting Solicitor
General to filing *amicus* brief . . . . . D1 - D2

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

September 21, 2005

State Personnel Board of Review
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

Appellant:

James Scott McLean
7272 Black Abbey Court
Dublin, Ohio 43017
Home phone 614-760-0206
Cell phone 614-783-7200

versus

Appellee:

Ohio Bureau of Workers' Compensation
30 West Spring Street
Columbus, Ohio 43215-2256
1-800-644-6292

Notice of Appeal

Notice is hereby Given that Appellant appeals to the State Personnel Board of Review from the Order of Notice of Retaliatory Discipline - Whistleblowers;

which was received on September 7, 2005 and which was effective on September 7, 2005.

S/_____

Appeal to the State of Ohio - State Personnel Board of Review

Executive Summary

September 21, 2005

I was terminated as Chief Investment Officer at the Ohio Bureau of Workers' Compensation because of written reports and oral statements to disclose significant financial losses related to an external investment manager, MDL Capital.

Section 124.341 provides that a state employee who becomes aware in the course of his employment the misuse of public resources may file a written report identifying the misuse with his supervisor or appointing authority.

On June 1, 2005, I wrote a memo to the Administrator/CEO of the Ohio Bureau of Workers' Compensation, Mr. James Conrad, stating among other things that "It is important that the MDL Fund be reported accurately and the determination of the loss fully examined." This report was prepared based upon a request for "key projects" that needed to be addressed by the next

Administrator/CEO at the BWC. Mr. Conrad had announced his resignation and this was his last week as Administrator.

I was placed on Administrative Leave and then subsequently fired from my position at the Bureau of Workers' Compensation as Chief Investment Officer based upon my statements and written reports that identified my intent to disclose problems associated with investment in the MDL Active Duration Hedge Fund, problems that clearly related the misuse of public resources. Over the previous eight months (from approximately late September of 2004 to the date of my Administrative Leave (June 7, 2005), senior staff at the Bureau specifically directed the loss associated with this investment. My oral statements to these individuals and then written report to the Administrator/CEO that was shared with senior staff made it clear to these individuals that I was unwilling to cooperate any further in a deliberate "cover-up." These actions were crippling the ability of the Investment Department to function in a efficient manner and were themselves in misuse of public resources.

The reasons given in the termination letter that I received on September 7, 2005, from Tina Kielmeyer, the acting Administrator/CEO, citing a lack of effectiveness and poor decision making are false and not supported by the facts. When I asked for a single example of poor decision making, Administrator/CEO Kielmeyer cited my

allowing Investment Department staff to accept gifts of popcorn over the Christmas season. I told her that accepting popcorn was approved prior to its receipt by the Chief Legal Officer my direct supervisor and the Chief Ethics Officer at the Bureau. Ms. Kielmeyer then informed me that she had nothing further to discuss. My termination took less than ten minutes.

On April 17, 2005, I received an email from Administrator Conrad stating "I don't think I have told you recently, buy you are doing a great job under very difficult circumstances." "I really do appreciate your effort and rely on your knowledge." this was approximately 45 days before I was placed on Administrative Leave. It seems inappropriate and unjustified for a new acting Administrator/CEO to disparage my job performance and base her decision to terminate me after only two days when the previous Administrator/CEO never expressed a concern over my decision making or effectiveness.

I do not believe that it is a coincidence that I was placed on Administrative Leave the very same day that, after I was escorted from the building, the Bureau announced the problem with the MDL Active Duration Fund to the media.

I believe that I was placed on Administrative Leave because I made written and oral statements during the previous week that I intended to fully disclose

all problems associated with the MDL Active Duration Fund. I made it clear that I thought that the change in Administrator/CEO was an appropriate time to openly discuss the deliberate actions of senior staff at the Bureau of Workers' Compensation that prevented the disclosure of serious and potentially criminal activity that had taken place. I became a liability to the well orchestrated efforts by senior staff to shape their own version of the events that took place.

I was placed on Administrative Leave only two days after Ms. Kielmeyer had been appointed acting Administrator/CEO. I had no meetings or conversations with Ms. Kielmeyer prior to my being placed on Administrative leave and was given no reason for this action. I read in the newspaper that I had been placed on Administrative Leave to allow the Management Review Team "unfettered access" to the Investment Department records. The fact is that the Management Review Team, and the consultant employed by the Review Team, did not (based upon the conclusions and accusations that have been reported in the press) have access to the appropriate files and records that would have moved their investigation forward and have allowed for the truth to be uncovered about contested issues had I been allowed to continue to function in my capacity os Chief Investment Officer.

On the very same day that I was placed on Administrative Leave, June 7, 2005, and escorted out of the building, the Bureau announced to the press that it had a problem with the MDL Active Duration Fund. There is no doubt in my mind that the Bureau placed me on Administrative Leave to allow senior management to orchestrate the release of information to protect them from incrimination and to restrict my access to the information that would have demonstrated their involvement.

I have attached as Appendix I a memo that I provided to the Administrator James Conrad based on his request for the key issues that should be brought to the attention of a new Administrator. I made it clear to members of senior management both in this memo and in oral statements, including but not limited to Chief Legal Counsel and functionally my direct supervisor, John Annarino, that I would not let the Investment Department continue to suffer from the attempt to contain and cover-up the problems associated with the MDL Active Duration Fund.

The efforts to cover-up the problems with the MDL Active Duration fund were directly responsible for stalling the many needed changes that were necessary to increase the controls and reporting functions that needed to be put in place. Staff was continually to at bi-weekly staff meetings by Mr. Annarino that "no changes are going to be made"

and that "no one is going to lose their job or be laid-off" in an effort to keep any staff member from making statements to individuals outside the Department and in particular not to the press.

On at least two occasions, Mr. Annarino scheduled meetings with all of the individuals staff members that worked in the Investment Department to discuss his veto of potential changes. These individuals were upset that changes might impact their job responsibilities. Mr. Annarino met with me prior to these meetings to remind me that the Bureau did not want any possibility that a disgruntled worker might blow this whistle on the problems associated with the MDL Active Duration Fund. The two individuals that can attest to this are Kim Bamghn and Craig Philips, employees that met Mr. Annarino and myself and were told explicitly that no changes would be made to their job function without their consent. These individuals were assured that they would be given the opportunity to determine if they agreed or disagreed with any planned changes and have input into any changes. Staff was well aware that I had no authority to change their job functions or reprimand them for any perceived shortfalls or problems with their work product.

My attempts to reveal problems with the MDL Active Duration Hedge Fund date back to April 2005, when I schedule a meeting in my office with the CEO of MDL Capital, Mark Lay, I was

discouraged during a series of events that led to the continued deterioration in the investment in the MDL Fund from disclosing information beyond my direct superior/supervisor. I have included a description of events leading up to my being placed on Administrative Leave. I have also included copies of the few memos and emails that I have in my possession. I was never given access to my office, files or email once I was placed on Administrative Leave. My personal belongings were boxed up and placed on the loading dock the day I was terminated.

My goal is to be able to clear my name and reputation. My well publicized firing has significantly damaged my credibility and made it much more difficult for me to secure an appropriate job in my profession. The truth is that the State Insurance Fund and the ancillary investment accounts that I was responsible for were managed very effectively and profitably. I have been provided the resources that I need to dispute the allegations of the Management Review Team and their consultant.

While it may seem insignificant, I believe that there is an important clarification that should be noted in the termination letter that I received. Ms. Kielmeyer states that she encouraged me to "keep other investment options open." In fact, this is not what Ms. Kielmeyer told me. Ms. Kielmeyer told me that if the Management Review Team recommended

that the investment function be moved outside the Bureau, she was not certain that my job would be moved along with the transition of the investment accounts. Ms. Kielmeyer told me to keep all my options open, a much more general statement and one not focused on finding employment outside the Bureau.

The facts will reveal that I worked effectively, in cooperation with members of the Legal Department, Accounting Department, Internal Audit Department and Special Investigations and others, to identify and resolve the problems associated with the MDL Active Duration Fund. I advocated hiring a forensic account to follow the cash flows associated with the account. I was not included in the communication with the Ohio Attorney General, who I assumed was aggressively pursing all remedies to recover the funds lost in this investment scheme. I was told that the Attorney General was fully informed of the problem with the MDL Active Duration fund, but was excluded from any meetings or seeing any written communications.

I ask that the Ohio Personnel Board of Review find that the Ohio Bureau of Workers' Compensation acted contrary to the laws, policies and rules of the States of Ohio and take whatever steps it can to remedy the damages that has been done in James S. McLean.

Description of the Events and Issues Resulting in the Firing of James S. McLean, former Chief Investment Officer of the Ohio Bureau of Workers' Compensation.

Chapter One: Uncovering Problems with the MDL Active Duration Fund

On Friday, April 23rd, 2004, I met with Mark Lay, the CEO of the MDL Capital, in my office at the BWC in Columbus, Ohio, to discuss the management practices and investment strategy of the Active Duration Fund (Fund). I set up the meeting earlier the same week after reviewing the monthly performance reports for the MDL account for the month of March, which consisted of a fixed income component managed to an active duration mandate benchmarked to the Lehman Aggregated Fixed Income Index (probably the most common performance benchmark for fixed income in the institutional markets) and the Active Duration Fund (a hedge fund that is the focal point of the accusations of mismanagement and the cause of approximately $215 million in losses to the Bureau's State Insurance Fund). I arranged the meeting because the performance reports indicated that the Active Duration Fund had lost approximately $7 million in market value during the month of March (from approximately $102 million to $95 million). What was particularly unusual was not the magnitude of the loss but the fact that the Fund had lost value and not appreciated in value.

Mr. Gasper, my direct supervisor and Chief Financial Officer of the Bureau, had discussed the Fund with me prior to suffering a stroke that placed him on sick leave during this period. He explained that the investment in the Fund was intended to protect against losses in the core portfolio (the more stand "long only" fixed income assets managed by MDL) during periods of rising interest rates. In the March performance report that I reviewed, both the "long only" component of the assets managed by Mr. Lay and the Active Duration Hedge Fund had fallen in value during the month, a period in which interest rates had risen. Thus, it was the direction of the loss, and not the amount of the loss that triggered a red flag in my mind and led me to seek additional answers from Mr. Lay.

As I would discover only after my first several months of employment with the Bureau the investment in the Active Duration Hedge Fund was actually funded (the wire sent out to establish the account) during the first several weeks of my employment. Obviously the analysis and decision to make the investment in the Fund was made during the months prior to my arrival at the Bureau. While I was attending new employee orientation, investment staff was instructed to proceed with the funding. A wire was initiated by Mr. Gasper and signed off by senior investment department staff, Fred Zigler and Geoff Stafford, without my knowledge. I was not informed of the investment

at the time or for several months thereafter. In a very casual remark as I was walking by Geoff Stafford's cube one day, several months after I had been at the Bureau, Mr. Stafford mentioned to me that he thought the investment in the MDL Active Duration Fund was a bit unusual. I believe that he also went on to give me some of the history of the relationship between Mrk Lay, George Forbes and Mr. Forbes' daughter Mimi. I made a mental note of this, but didn't consider it particularly significant at the time given the difficult working relationship that Mr. Stafford had with the rest of the department staff, the problems that staff had expressed to me concerning Mr. Stafford and the impression that I had formed early on in my tenure with the Bureau that Mr. Stafford tended to create issues that had very little basis in fact. There was a long list of things in the Investment Department that Mr. Stafford had problems with, most of them with no basis. Several staff members had warned me that Mr. Stafford was making extremely derogatory comments about my leadership and decisions to other employees in the Bureau, employers outside the Investment Department that might not understand that this was just standard behavior for Mr. Stafford and the members of the Investment Department had basically learned to deal with.

Earlier in 2004 after I had been onboard with the Bureau for about six of seven months, I believe it was in February, Mr. Gasper suffered a stroke. Mr. Gasper was hospitalized for a short period of time

and was recovering at home during most of March and April to the best of my recollection. When Mr. Gasper suffered his stroke, it became incumbent upon me to dive into the files and get up to speed immediately on all the investments that I might not be fully familiar with after only my first six or seven months of employment (the Bureau had approximately 150 external investment managers/funds). One of the first files that I pulled was the MDL Capital file. I spent several hours reading the initial offering prospectus and other related documents that were in the file. Based upon that preliminary review, I believe that I had a good working knowledge of what I was dealing with. Based on this information, the overall portfolio (specifically a fairly conservative absolute rate of return strategy with a very conservative leverage ration of 150% or 0.5).

On either Thursday, April 22, 2004 or Friday morning April 23, I received phone call from Mr. Gasper. Mr. Gasper told me that he was aware that I was having a meeting with Mr. Lay and wanted to know why I was having Mr. Lay come over from Pittsburgh to discuss the Active Duration Fund. I explained to him that I had observed a drop in the value of the Fund from approximately $102 million to $95 million during the month of March which seemed inconsistent with the investment strategy as I understood it. Mr. Gasper told me that Mr. Lay was a "friend of the Bureau" and asked me if I knew that Mr. George Forbes (a member of the

Bureau's oversight commission) daughter "Mimi" worked for Mr. Lay. I explained to Mr. Gasper that the meeting was not intended to be confrontational, but that given his absence from the Bureau, I had stepped up my efforts to be able to answer any questions about all the components of the portfolio. I also explained that the monthly reports on the Active Duration Fund provided very little if any insight into how the account was being managed. In most case the monthly reports provided by outside investment managers offered "very detailed information on the specific holding - while the MDL Active Duration Fund was only reported as a single line item included in the report from MDL on the core portfolio position.

Mr. Lay and I met in my office on April 23rd. Mr. Lay explained to me that, based upon the recommendations of his professional staff, he had been convince to position the Active Duration Fund "long" during the month of March as opposed to being "short". He believed that despite his conviction that long-term interest rates would continue to rise, supported by the fact that the Federal Reserve Board of Governors had clearly signaled their intention to continue to raise short-term interest rates, he had been persuaded by his staff by a member of arguments and economic statistics to be "long." He stated that he had since reversed this position in the fund to be "short" and that the fund would continue to be short for the foreseeable future. He assures me that

he would consult with me if the position were to change for any reason. Again, it was my understanding that the primary, if not the exclusive reason for Mr. Lay being awarded the mandate for the Active Duration Fund, was to hedge his core position (his "long" core portfolio only and not the "long" fixed income of the Bureau) against rising interest rates. He admitted that he had been "whipsawed" during March (which means that he was on the wrong side of the market, changed sides, and then had that side of the market move against him). This was about the only explanation that seemed to me to make any sense prior to the meeting. His explanation was consistent with my suspicious about the account management.

At the meeting, I discussed the need to limit the volatility in the account, the importance of preservation of capital and need for much greater information flow about what was happening with the Active Duration Fund specifically. I told Mr. Lay that the single line item reporting that the Bureau was receiving was inadequate. He promised to send to the Bureau whatever detailed reports were necessary. He assured me that he never lost money for a client in his history as money manager and that the Bureau had been his first real breakthrough institutional account and was his most important client.

What I didn't know at the time was that Mr. Lay had to be aware of a continued loss in the fund

during the month of April which he did not disclose to me at the meeting on April 23. It wouldn't be until mid-to late-May, when I received the April performance reports from MDL that the Fund had suffered another loss during the month, a loss of approximately $35 million as I recall. When I reviewed the April report, I realized the Mr. Lay must have known about the loss at the April meeting and I felt that he had been dishonest with me by not disclosing the additional loss at that time. I called Mr. Gasper, who was still at home recovering from his stroke, and informed him of the loss and the lack of confidence I now had in Mr. Lay for being less than fully honest about the status of the account at the April meeting. Based on my lack of confidence in Mr. Lay and the importance for investment managers to completely honest in their relationships with the Bureau, I expressed my belief that the Bureau's continued investment in the MDL Active Duration Fund should be terminated at that time. Mr. Gasper informed me that he wanted to make some phone calls and think about the best way to deal with the situation.

Either later that same day or within a day or two of my conversation with Mr. Gasper, he called me back at the office and told me "here's what we're going to do," "We're going to give Mr. Lay an additional $100 million to manage in the Fund." Mr. Gasper told me that he trusted Mr. Lay and that Mr. Lay was, in his opinion, an experienced money manager that had the skills to successfully manage

this type of account. Mr. Gasper expressed his belief that long-term interest rates would almost certainly rise and that his was one of the few opportunities the Bureau had to mitigate the risks that rising interest rates posed to the "long" component that MDL managed. While I now suspect that the magnitude of the losses incurred during the month of April was tied to the over leveraging of the account, I was not receiving the additional reports that I had requested and the Mr. Lay had promised to provide. I went to Geoff Stafford following my phone call from Mr. Gasper and told him something such as: "you're not going to believe what we're going to do with the MDL Active Duration Fund." I told him that I had spoken with Mr. Gasper and that Mr. Gasper had directed be to transfer an additional $100 million from the core long component of the account to the Active Duration Fund. Mr. Stafford was aware of my discomfort in making the additional investment, and I believe that Mr. Stafford also had serious concerns with the management of the Fund. Mr. Stafford prepared the required paperwork, Fred Zigler signed the documents and copies were sent to Bank One (now J.P. Morgan/Chase and the Bureau's custodian bank) as well as to the Ohio Treasurer's Office informed them of the transfer.

At some point, I don't recall the exact date, Mr. Gasper and I had been discussing the increasing problems with the MDL Fund, I believe that it was in July or August of 2004. I had a one-on-one with the

Administrator (Mr. Conrad) later that afternoon and asked Mr. Gasper how to address the issue of the losses in the MDL Fund with Mr. Conrad. Mr. Gasper told me that the one-on-ones that I had with Mr. Conrad were not the appropriate forum to discuss the MDL losses. He told me that Mr. Conrad liked to focus on positive issues that he could put in the report to the Governor. Mr. Gasper assured me that he would address the issue with Mr. Conrad in a separate meeting. This was not the first time Mr. Gasper had "managed" the one-on-one process with Mr. Conrad. Prior to my first one-on-one (these took place about every two months or so) soon after being employed at the Bureau, Mr. Gasper had requested a meeting following the one-on-ones for my assessment of how the meeting went and what was discussed. There was no question that Mr. Gasper wanted to aware of all the issues that I discussed with Mr. Conrad and clearly instructed me on how he wanted to control the communication between myself and the Administrator.

It was common practice at the Bureau to never put anything sensitive or controversial in an email. Any and all sensitive issues were to be hand delivered to the appropriate individual or simply discussed and not committed to paper. The explanation on given was the email could become a public record and thus should be used for only the most bland ordinary correspondence. This was explained to me by Mr. Gasper and later

reinforced by John Annarino, the Chief Legal Officer and the Ethics Officer of the Bureau, when he became my direct report. In fact, Mr. Annarino would often chastise me for including his name on memo's that he thought discussed sensitive information and at one point instructed me how to "double-delete" emails from the computer system so they could not be retrieved later. This is somewhat tricky process that requires a series of steps and Mr. Annarino had the head of Special Investigations, Mr. Wersell, come down to my office on the 27th floor and show me the commands necessary to complete the process.

This is just an example of the environment in the Bureau that discouraged written reports on sensitive topics.

I was shown on e memo during my interrogation by the regulatory agencies I have met with where I sent a note to Mr. Gasper saying the approximate value of the MDL Fund was somewhere between $157 and $163 million, and he responded (somewhat sarcastically) that he liked the $163 number better. This memo, and I'm sure there is much more correspondence, illustrates that I was openly communicating with Mr. Gasper about the management of the Fund. This memo was probably dated during the summer of 2004 (June or July) based on the value of the Fund referred in the memo. As I recall, I had begun to get some scattered and sporadic reports on the MDL Active

Duration Fund, but not enough to be able to reveal what was really happening in the account. I believe that the July performance report showed another sharp decline in the value of the fund.

I discussed the continued deterioration of the Fund with Mr. Gasper and of course shared the monthly performance reports and any and all other correspondence that we had been received from MDL. Mr. Gasper told me that he would set up a meeting with MDL and that we would have Mr. Lay and all of the appropriate portfolio managers that had any responsibility for the accounts management come to Columbus for a meeting. As I recall this discussion took place in late July or early August and that we were forced to push the meeting back into September for some reason. I think the delay was an issue with MDL but I'm not sure.

I have a two page memo with a list of questions that I prepared prior to the meeting and shared with Mr. Gasper for his input and review before the meeting.

I need to go back at least a month here. I received a letter from Olympia Capital in Bermuda, the administrator for the Fund, asking me to sign an acknowledgment for certain "clarification" that were being made in the offering memorandum to the Fund. Once of these "clarifications" was to amend the limitation on the amount of leverage

used in the fund to exempt U.S. Treasury securities from the 150% leverage provision (U.S. Treasury securities were the only securities that the Fund was shorting in the account). In a phone conversation with Pricilia Brown, the Chief Legal Officer for Olympia Capital, I told her that I had no intention of signing the document because it was not a "clarification" but a material change in the investment strategy that I would never agree to. The letter dated August 2004, but I don't think I actually saw a copy of it until either late August or early September. At some point I was also provided with a redline copy of the changes to the offering prospectus. The way it was written and presented to me, it seemed pretty clear that they could not make the changes without my consent, which was never given, and they were clearly on notice that it would not be given.

Ms. Brown seem quite concerned that we would not sign it seems fairly obvious that she knew the account had suffered significant losses due to leverage that should not have been permitted by the administrator of the Fund.

Now back to the September meeting with MDL. Prior to the meeting with MDL, which began relatively late in the afternoon, Mr. Gasper came down to my office and told me that he had run into Mr. Conrad in the hallway on the 29th floor. According to Mr. Gasper, Mr. Conrad informed him that George Forbes, a member of the oversight

commission, had called him earlier that day, telling Mr. Conrad that he (Mr. Forbes) was aware that the Bureau was having a meeting with Mark Lay later that day and asking if we could possibly "do what you can to help Mark out" or "see if you can't give Mark a break, because I know he is having a tough time with the account." I'm not sure what the exact words were but it was something to this effect. This conversation, and actually all of the above conversations, is disputed by almost all of the participants. Did Mr. Conrad talk to Mr. Gasper and tell him about a phone call with Mr. Forbes? - I don't know. Mr. Conrad told me later (perhaps a week or two weeks later) that the conversation never took place.

What impact did Mr. Gasper's conversation with me have? I was relatively certain that prior to the conversation with Mr. Gasper, the ultimate outcome of the meeting with MDL would result in at least the termination of the Active Duration Fund if not the entire relationship with MDL Capital. Now, I was being told that the Administrator wanted us to "give Mark Lay a break." I was somewhat disappointed that Mr. Lay was going to get a break that I felt he didn't deserve, but at the same time I felt absolved of any responsibility for what might happen to the Fund going forward. The responsibility for the Fund would now be assumed by Mr. Conrad, Mr. Gasper and others. I also thought that my suspicious that perhaps Mr. Gasper was not keeping Mr. Conrad fully informed about

the problems with the active duration Fund were unfounded, and obviously Mr. Conrad had been in the loop and the assurance that I had received from Mr. Gasper that he would discuss it with Mr. Conrad "in the right forum and not in a one-on-one" had been followed up on.

In the meeting Mr. Lay asserted that "he thought we had signed" the "clarification" from Brown Capital. When informed that we had not signed the acknowledgment to allow for increased leverage, Mr. Lay said something to the effect of "-well then I guess I'm in a lot of trouble." Mr. Lay contended that interest rates would move up and the Fund would ultimately prove to be profitable. Nothing was really resolved in the meeting. I told Mr. Gasper that I didn't think Mr. Lay was being honest about not knowing that we had not agreed to the "clarification" in the leverage provision, and that what type of manager would commit hundreds of millions of dollars, actually almost $2 billion at that point to an investment strategy that he "thought" was approved!

Within a period of about two weeks (very approximate) I received a call telling me the Administrator wanted to see me in his office. Apparently, someone in the Bureau (an employee of Financial Reporting I have been told) informed Tina Kielmeyer, then the assistant administrator, of the losses being recognized in the MDL Fund. Apparently, this individual had been talking with

someone in the investment department, although Financial Reporting had ready access to the information themselves. The topic was not hidden from staff within the investment department. At the same time I was meeting with Administrator Conrad, three investment department staff were reporting "something strange going on with the MDL account" to internal investigations within the Bureau. The staff members told me this after their meeting. They told me that it was not their objective to get me in trouble, they wanted to get Geoff Stafford in trouble. In general, everyone in the department couldn't stand Mr. Stafford.

During my meeting with the Administrator, I told Mr. Conrad that I assumed he was aware of the problems with the MDL Fund through his conversations with Mr. Gasper. Mr. Conrad informed me that he never spoke with Mr. Gasper that afternoon in the hallway on the 29th floor and had never received a phone call fro Mr. Forbes concerning the MDL account. I was instructed not to talk to Mr. Gasper. I found out later that afternoon that Mr. Gasper had been placed on Administrative Leave and had left the building.

Either the next day or perhaps two days later, I was called back into Mr. Conrad's office and asked to think very carefully before I answered the next question. Was I sure that Mr. Gasper had told me the Mr. Conrad had received a call from George Forbes to go easy on Mark Lay? Did Mr. Gasper

perhaps tell me that he (Mr. Gasper) had received the call from George Forbes? I thought very carefully about my answer, but there was no doubt whatsoever in my mind what events had taken place. Mr. Gasper had told me that he and Mr. Conrad had discussed the MDL Active Duration Fund in the hallway on the 29th floor and Mr. Gasper told me the Mr. George Forbes had called Mr. Conrad to ask us to go easy on Mark Lay. Whether Mr. Gasper and Mr. Conrad really had this conversation I may never know. Mr. Conrad denies it. It is my understanding that Mr. Gasper denies it.

The next day or two, I found out while at a meeting in Zanesville on Bureau business from Mr. Conrad's assistant, Mr. Ben Taylor, the Mr. Gasper had resigned. All this took placed during my first year (or about 13 months) at the Bureau.

Chapter Two: Mr. Gasper Leaves the Bureau and the Cover-up of the MDL Mess Begins

With Mr. Gasper's departure, the line of reporting for me switched to Tracy Valentino, who was made acting Chief Financial Officer. This reporting structure only lasted for a few months, and functionally I started to have more frequent one-on-one's with the Administrator, Mr. Conrad, and did not have a great deal of interaction with Ms. Valentino. When Ms. Valentino was promoted to Chief Financial Officer from "acting" I was told that

I would report directly to Mr. Conrad, with John Annarino, the Chief Legal Officer, my direct supervisor for all administrative matters. Functionally, I began reporting to Mr. Annarino and not Mr. Conrad. Even Mr. Annarino was somewhat confused about the overall structure, he certainly considered me a direct report to himself and not Mr. Conrad. I did continue to have periodic one-on-one's with Mr. Conrad, but met with Mr. Annarino practically daily on a wide range of issues. Mr. Annarino began attending Investment Department staff meetings and met one-on-one with every member of the investment department staff.

Mr. Annarino also the Chief Ethics Officer for the BWC, coordinated what I can only refer to as the "cover-up" of the MDL losses. I assume that he was directed by the Administrator to keep a lid on the MDL problem, but I don't have any documentation Mr. Annarino was particularly concerned that someone in the investment department would contact the press or somehow provide documents or information on MDL to someone outside the Bureau. Mr. Annarino made frequent statements at every investment department staff meeting that "no one was going to lose their job or get laid off" and that "there were not going to be any changes in anyone's job that they didn't agree with." Mr. Annarino directed me to give annual performance reviews to staff that rated them as high as possible in every category. Several staff members were

disappointed the previous year that they had achieved only "satisfactory" ratings on their annual performance reviews. He also made frequent statements that the investment staff were "the finest in the industry" and the best performing department at the Bureau. Every time I tried to review operational processes or make any changes, staff always threw this back in my face, that they were "already the best they could be" and why should they put forth any extra effort to change anything. Mr. Annarino made it very clear to the staff that I did not have authority to discipline them in any way - and they took advantage of this. I wrote a reprimand for Fred Zigler after he refused to have anything to do with compiling and verifying performance reporting for the outside managers, even though this was one of the key responsibilities in his job description. Mr. Annarino refused to let me even finish the final draft of the reprimand.

Mr. Annarino instructed me to make sure the staff was kept content and happy so that they would not reveal any information on MDL. Keeping a lid on the MDL losses was not something that I simply assumed that Mr. Annarino wanted: it was a direct and straightforward mandate. The Bureau did not want any information on MDL to get out and I was to cooperate with the mandate.

The Bureau also deliberately misled the auditors, KPMG, so that the problems with MDL would not be

included in the then just finished audit of the 2004 fiscal year. The lead auditor on the BWC account called to inquire about the departure of Mr. Gasper and asked whether it was related to anything that his firm should be aware of. The Partner at KPMG was told "no" that Mr. Gasper had left for health related reasons only.

During the initial "pre-meeting" for the fiscal year 2005 audit (audit period June 04 - June 05) the heads of the departments that would work most closely with the audit team and key staff members in those departments met with and were introduced to the various auditors that would be working on the audit. As the meeting was wrapping up, I was concerned that the MDL issue had not been discussed. I wrote the letters "MDL" on the top of a legal pad and walked over to the Chief Financial Officer, Tracy Valentino, pointed to the letters and said ' don't you think it's important that we discuss this issue?" Ms. Valentino told me that she had already discussed the issue in her office with the partner in charge of the audit for KPMG and that it was "taken care of." The objective was to sufficiently bury the losses in the footnotes so that the issue would not appear as a significant issue. The message to me at the meeting was that MDL was not an issue to be discussed openly during the audit. This meeting took place (approximately) in May of 2005.

The "cover-up" of the MDL losses became increasingly frustrating because it was during this period that I was lobbying in the strongest possible manner for extensive changes within the investment department that would begin to guild an infrastructure adding technology, staff and due diligence procedure that would not allow this type of loss to go unnoticed going forward. This is well documented in the budget process that took place in the Spring of 2005.

Chapter Three: Overall Job Performance

The termination letter that I received from Administrator Kielmeyer stated that "your leadership of the investment department of the BWC does not meet my expectations." The facts will show that I only worked for Administrator Kielmeyer for two days before I was placed on Administrative Leave. It went on to say that "Your lack of effectiveness, and poor decision making has only led me to conclude that it is now time to move the investment operation at BWC in a new direction with new leadership." This was the first time I had been confronted with accusations of "lack of effectiveness" and "poor decision making."

Less than two months before I was placed on Administrative Leave, I received an email from then Administrator Conrad dated April 17, 2005 stating "I don't think I have told you recently, but

you are doing a great job under very difficult circumstances." "I really do appreciate your effort and rely on your knowledge." This is one of the few documents that I do have access to after being escorted from the building upon being placed on Administrative Leave.

I asked Administrator Kielmeyer in the very short meeting (probably less than ten minutes) that I had with her on September 7, 2005, to give me an example of a "poor decision" that I had made while Chief Investment Officer. Her first response was that I had allowed the investment department staff to accept "meat trays and wine" as gifts from investment manager and brokers doing business with the Bureau. I told her that the staff did not accept any " meat trays" or bottles of wine while I served as the Chief, and that she was referring to events that took place prior to my employment at the Bureau. I had heard stories of somewhat excessive Christmas gifts from brokers prior to my arrival at the Bureau and told her that in fact I had sent out a very stern letter several months prior to the Christmas season explaining to the brokers and investment managers the policies that we operated under at the BWC and not to send any gifts. She then told me that I had allowed staff to accept popcorn. When I explained to her that I had discussed the acceptance of these consumable gifts with Mr. Annarino, the Chief Legal Officer and Chief Ethics Officer of the Bureau, and he agreed that it was allowed under Bureau

policies to accept these types of gifts as long as they were shared with the rest of the staff and Bureau at large, which they were. She then responded that "that's the difference between you and me" because she did not think it was appropriate for the investment staff to accept popcorn from individual doing business with the Bureau. She then went on to bring up the MDL situation making a comment similar to "and the whole MDL mess." I replied that I had in fact worked to uncover the problems with the Active Duration Fund at a very early stage and had reported it to my superior. At that point she said she had nothing further to say and turned it over to Barb Young. Director of Human Resources.

Ms. Young told me that I would be getting my last paycheck on September 17, for time already worked, that today (September 7) was my last day and that I would get paid vacation and half of my accumulated sick leave. The whole meeting lasted about ten minutes or less. At that point, Tom Wersell, head of Special Investigations, opened the door and met me at the loading dock with my personal belonging that were in my office boxed up.

I would like to address the accusation of a "lack of effectiveness." During the approximate two years that I served as Chief Investment Officer at the Bureau, the State Insurance Fund exceeded its performance benchmark. During fiscal year 2005,

even after accounting for a least $200 million in losses due to the MDL Fund, the State Insurance Fund more than likely (I haven't seen the June 2005 performance numbers) exceed its performance benchmark for the fiscal year by significant margin, perhaps 50 basis points, one of the larger margins of out performance in Bureau history. While these figures are being disputed by the Management Review Team and their consultant, the real performance numbers will be revealed once a through and accurate assessmen of the State Insurance Fund's performance is conducted. The statement on performance that have been released to the press are simply wrong. The ancillary accounts, which I personally managed, and represented about $1.4 billion, exceeded the Lehman Aggregate Fixed Income Benchmark by almost 70 basis points over the past year, better than the majority of fixed income managers employed by the Bureau and most likely in the top 10 percentile of fixed income managers over the same period.

I put in place a program to have J.P. Morgan/Chase provide comprehensive performance reporting a significant deficiency that existed when I arrived at the BWC. The transition from the legacy Bank One system to the J.P. Morgan/Chase system was being implemented as quickly as possible. I had involved the Chief Financial Office, Tracy Valentino, who wen with me to the meeting at J.P. Morgan/Chase at their

Polaris offices to see a demonstration of the new system and she had approved funding it in the Bureau budget.

I submitted a budget that requested six additional professional staff be added to this investment department along with over $1 million in additional software to expand and enhance the ability of the department to conduct investment analysis and due diligence. When I arrived at the BWC, there was really no capacity to do appropriate analysis and the reporting system were focused on accounting functions and not investment analysis. The accounting system was not capable of accurately recording the investment transactions that were being conducted by some of the largest outside investment managers.

I significantly reduced the funds under management by underperforming managers, including National City and Fifth Third Bank, bringing the balances of these two managers down to approximately $50 million from balances that had been in excess of $200 million and $100 million respectively. The consultant brought in by the Management Review Team contemporaneously with my being placed on Administrative Leave (Ennis Knapp) claimed credit "firing" these same managers. The same credit was taken for two American Express funds that I had recently reduced by 50%. The consultant, Ennis Knapp, announced to the press that they

were firing these managers claiming the credit for uncovering problems with the manager. I had in fact "fired" a number of managers for various compliance or performance issues over the two year period that I was there.

These sharp and significant reductions in funds managed by some of our outside investment managers came during a period when I was under direct instructions from my supervisor, Mr. Annarino, to "make no changes." This direction was in place for the last nine months or so that I was the Chief Investment Officer. There were constant and multiple requests for the release of public information by the media concerning the Capital Coin funds that severely stretched the resources of the investment department beyond its ability to perform. In spite of an operating environment that did not have sufficient resources to excel, the monthly performance reports, the analysis of the RFP's that were issued, fixed income trading, and all the extensive duties and operations of managing am multi-billion portfolio continued without significant problems. Even with the directive to "make no changes" I continued to push for numerous improvements and innovations in the operations of the investment department.

There are subtle but important issue that I want to address that was included in my Termination Letter. Administrator Kielmeyer told me at a meeting that I requested while I was on Administrative Leave to

keep my options open not other employment options as highlighted in the letter. Administrator Kielmeyer indicated that if the decision of the Management Review Team was to move the investment operations outside of the Bureau, then my position might be at jeopardy. At no time during this meeting did she indicate any displeasure or problems with my past performance or decision making.

I have a copy of a memo that I sent to Administrator Conrad during his last week as Administrator based upon his request to compile a list of "key projects" underway in the investment department. In the memo I identify the ongoing investigation of MDL at the number one key project that was impacting the Investment Department. The memo was prepared to inform the next Administrator/CEO of the most immediate issues at the Bureau that should be addressed. I clearly stated that "It is important that the MDL Fund be reported accurately and the determination of the loss fully examined." The memo goes on to explain a number of projects that were underway all dealing with enhancements to controls and increasing the abilities and transparency of many of the issues that I seem to be accused of not addressing.

I believe that this memo alerted senior management to the fact that I was unwilling to continue to participate in any "cover-up" of the

MDL Active Duration Fund problem. I made it clear in my conversations with Mr. Annarino and others that once a new Administrator was hired, that it had to be made public. I don't believe that it is a coincidence that within hours of my being sent home on Administrative Leave that the Bureau announced to the press that there was a problem with the Pittsburgh based investment manager, MDL Capital.

Chapter Four: My Expectations from the State Personnel Board of Review

My goal is to be able to clear my reputation. I have been accused of being ineffective and making poor decisions. This is simply not true. I want to clear my name to be able to secure continued employment in relatively small community of individual investors. The decisions to invest in the Capital Coin funds and the MDL Active Duration Fund were made before I arrived at the Bureau. There was no complacency on my part to review, analyze and challenge to continued investments in these external investment managers. In the case of the Capital Coin fund, internal auditors at the Bureau had raised questions about the procedures and controls that were in place and were rebuffed by senior management. The Capital Coin funds underwent financial reviews by what was assumed to be an independent certified public accounting firm.

The Bureau has a Financial Reporting unit, Internal Audit and undergoes a full audit annually by KPMG. The separation of duties and responsibilities is a critical component to insure proper controls and oversight. There was no effort by the Investment Department to discourage a full and complete accounting of my investment, investment manager or broker/dealer.

I firmly believe that I was placed on Administrative Leave and subsequently terminated from my position at the Bureau based upon my statements and written report to bring the issues in the MDL Active Duration Fund to the attention of the next Administrator/CEO and to advocate for full disclosure.

The reasons given for my termination, a lack of effectiveness and poor decision making are not supported by the facts and are not true. Prior to my termination, I was never notified of any poor decisions that I had made or any lack of effectiveness. In fact, I have included an email from the former Administrator/CEO stating just the opposite.

I have cooperated with all of the various legal and regulatory agencies that are currently investigating these issues. I have answered every question honestly and have tried to provide as much information as I can to allow these agencies to identify and prosecute any wrongdoing. I estimate

that I've given about 35 hours of testimony to date, all with any legal representation. I've told the truth and I don't believe that I'm suspected of any wrongdoing and I shouldn't be!

The Bureau did not give me an opportunity to resign, thus I'm first person that has been "fired" from my involvement with the current scandals impacting the BWC. I believe that I was "fired" for threatening to bring the truth out in the open. I don't think this right.

The Bureau has allowed the Management Review Team and their consultant to make numerous defamatory statements to the press that have no basis in fact. They have mad statements to the next Chief Investment Officer needs to be "ethical and competent." These individuals have never met with me and do not know me.

I ask the State Personnel Board of Review to remedy this injustice. I just finished putting one daughter through college and have another daughter in her second year at Ohio University. I want to show them that people shouldn't be punished for doing the right thing.

INVESTMENT MANAGEMENT AGREEMENT
between
OHIO BUREAU OF WORKERS' COMPENSATION
and
MDL Capital Management, Inc.

This is an Agreement by and between MDL Capital Management, Inc. (hereinafter referred to as the "Investment Manager"), doing business at 225 Ross Street, Third Floor, Pittsburgh, Pennsylvania 15218, Bureau o Workers' Compensation (hereinafter referred to as the "Bureau"), having offices at 30 W. Spring Street, Columbus, Ohio 43215-2256, entered into the day, month and year set out below.

Whereas, the Bureau has issued as Request for Proposal (897007) for fixed income investment fund managers; and

Whereas, the Investment Manager has submitted one of the lowest responsive and responsible proposals to the Bureau's RFP and was chosen based upon investment performance standards established by the Bureau as well as organization strength, investment background and the ability to conform to the Bureau's Investment Policy and Guidelines; and

Whereas, the Bureau desires to enter into and Agreement with the Investment Manager to provide the needed services as set out in the RFP:

Now, therefore, the parties hereto mutually agree to the following provisions:

1. **Appointment as an Investment Manager**. The Bureau appoints and retains the Investment Manager as a discretionary investment manager to the Bureau on the terms and conditions set forth in this Agreement and the Schedules attached hereto for those assets that the Bureau assigns, which assets shall be referred to collectively as the "Investment Account". The Investment Account assets shall remain a part of and subject to the provisions governing the individual trust funds and at all times shall be held exclusively for the purposes for which the funds are collected. Subject to the investment objectives, policies, and restrictions set forth in this Agreement and the Schedules attached hereto, the Investment Manager shall have full discretionary authority to manage the Investment Account, including, when the Investment Manager deems appropriate and without prior consultation with the Bureau, the investment and reinvestment of assets in the Investment Account. The Bureau may make additions to and withdrawals from the Investment Account in such amounts as the Bureau shall deem appropriate, provided hat all withdrawals shall be made after giving the Investment Manager notice as set forth in Schedule A.

2. **Acceptance of Appointment; Standard of Performance**. The Investment Manager accepts its appointment as a discretionary investment manager and agrees to use it best professional judgment to manage and invest the Investment

Account in accordance with the provisions of this Agreement. The Investment Manager acknowledges that the Investment Account assets are those of the public trust fund governed by the provision of Chapter 4123, Ohio Revised Code, and governed by the Statement of Investment Policy and Guidelines. The Investment Manager acknowledges receipt of a copy of Ohio Revised Code Chapter 4123 and a copy of the Statement of Investment Policy and Guidelines and agrees to adhere to the standard of care and conduct required of a fiduciary under Chapter 4123 and any applicable federal and state law.

3. Investment Objectives, Policies, Modifications and Restrictions. The investment objectives, policies and restrictions of the Investment Account are set forth in Schedule A of this Agreement and may be modified by the Bureau with sixty (60) days prior written notice to the Investment Manager. The Investment Manager shall promptly advise the Bureau of its disagreement in writing with any modifications to Schedule A proposed by the Bureau. Any termination shall be in accordance with the provisions of Paragraph 17.

4. Transaction Procedures. All Investment Account transactions shall be consummated by payment or delivery to or by the custodian, currently the Treasurer of the State of Ohio ("Custodian"), through the Custodian's Agent ("Custodian's Agent") or such depositories or agents as may be

designated by the Custodian, of all cash and/or securities due to or from the Investment Account. Except as provided above, the Bureau shall be responsible for all custodial arrangements and the payment of all custodial charges and fees and the Bureau shall be responsible for giving proper instructions to the Custodian. The Investment Manager shall have no responsibility or liability with respect to custodial arrangements or the acts, omissions or the conduct of the Custodian except where (1) the Investment Manager participation in or undertakes to conceal an act or omission of the Custodian where such act or omission is a breach of Custodian's or Investment Manager's fiduciary responsibilities, (2) by failure to discharge its responsibilities under this Agreement, the Investment Manager has enabled the Custodian or Bureau to commit a breach of Custodian's or Bureau's fiduciary responsibilities, or (3) the Investment Manager has knowledge of a breach by the Custodian or Bureau and does not make reasonable efforts under the circumstances to remedy the breach of Custodian's or Bureau's fiduciary responsibilities and is under a duty to do so. With regard to the foregoing power and duties, the Bureau acknowledges that the Investment Manager shall have no responsibility for the failure by the Custodian to make timely settlement of transactions in securities that have been loaned from the Investment! Account by the Custodian pursuant to a securities lending program authorized by the Bureau. The Bureau further acknowledges

that the Investment Manager shall have no obligation or responsibility to vote proxies for securities loaned from the Account by the Custodian.

Notwithstanding the provisions of this paragraph, all transactions shall be carried out pursuant to Schedule C.

5. Procedures for Securities Transfer. Procedures for the transfer of securities and cash to and from the designated Investment Account under the terms of this Agreement shall be set forth in a directive letter from the Bureau prior to any transfer. The Investment Manager agrees to follow these procedures.

6. Allocation of Brokerage. The Investment Manager shall have the authority and discretion to select brokers and deals to execute Investment Account transactions initiated by Investment Manager, and for the selection of markets on or in which the transactions will be executed. The Investment Manager may allocate the execution of transactions to such brokers and dealers for execution on such markets, at such prices and at such commission rates as in the good faith judgment of the Investment Manager will be in the best interest of the Investment Account, taking into consideration in the selection of such brokers and dealers not only the available prices and rates of brokerage commissions, but also other relevant factors (such as, without limitation, execution

capabilities, research services provided by such brokers and dealers which are expected to enhance the Investment Account and overall management capabilities of the Investment Manager). The Investment Manager shall not execute Investment Account transactions through or with affiliates of the Investment Manager. The Bureau will provide the Investment Manager with a list of approved broker and dealers to be sent in letter form which will require acknowledgment of receipt. The use of Approved Brokers is required by the Bureau's Investment Policy which also mandates the amount of transactions to be done by minority and Ohio qualified brokers.

7. Proxies. The Investment Manager shall use its best good faith judgment to vote such proxies in a manner which best serves the general provisions of the Ohio Revised Code and the interest of the Bureau.

8. Reports. The Investment Manager shall provide to the Bureau monthly and quarterly reports concerning the status of the Investment Account and all other reports set forth in Schedule A and all reports as may be customary or reasonably requested by the Bureau.

9. Service to Other Clients. It is understood that the Investment Manager performs investment management services for various clients. Subject to the provisions of paragraph 2 hereof the Bureau

recognizes that the Investment Manger may give advice, exercise investment responsibility and take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Investment Account so long as the Investment Manager's policy to the extent practical, is to allocate investment opportunities to the Investment Account over a period of time on a fair and equitable basis relative to other clients.

It is understood that the Investment Manager shall not have any obligation to purchase for or sell for the Investment Account any security which the Investment Manager, its principals, affiliates, or employees may purchase or sell for its own or for their own accounts or for the account of any other client, if in the opinion of the Investment Manager such transaction or investment appears unsuitable or undesirable for the Investment Account.

No personnel of the Investment Manager, who exercises any functions or responsibilities in connection with the review or approval of the undertaking or carrying out of any work under this Agreement, shall prior to completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible, or in conflict with the discharge and fulfillment of such person's functions and responsibilities with respect to the work under this Agreement.

Any such person who acquires an incompatible or conflicting personal interest, prior to, on or after the effective date of this Agreement,

or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Bureau in writing. Thereafter such person shall not participate in any action affecting the work under this Agreement, unless the Bureau shall determine that in the light of the personal interest disclosed, such person's participation in any such action would not be contrary to the public interest.

10. Assignment and Subcontracting. No "assignment" (as defined in the Investment Advisers Act of 1940) of this Agreement shall be made by the Investment Manger without the written consent of the Bureau. If the Investment Manager merges or consolidates or transfers substantially all of its assets to another entity, the resulting entity shall so notify the Bureau and shall be the Investment Manger hereunder only if the Bureau expressly consents in writing; and the resulting entity shall provide the Bureau with Part I and Part II of the Form ADV. The Investment Manger shall not hire or use subcontractors without prior written approval from the Bureau and any work subcontracted shall be at the expense of the Investment Manager.

11. Fees for Investment Management Services. The compensation of the Investment Manager for its services hereunder shall be calculated and paid quarterly in arrears by the Bureau in accordance with the attached Schedule B.

12. Representations. The Investment Manager represents that it is a bank, and insurance company, an investment management company or an investment advisor as defined by the Investment Advisers Act of 1940 will retain such status for the duration of this Agreement. The Investment Manager will promptly notify the Bureau in writing of any change or expected change in the status of the Investment Management company. The Investment Manager represents that it complies with all applicable federal, state, and local laws in the conduct of the work hereunder and represents that it will continue to do so for the duration of this Agreement. The Investment Manager accepts full responsibility for payments of all taxes and insurance including workers' compensation insurance premiums, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by it in the performance of the work authorized by this Agreement.

The Bureau warrants that it is a state agency statutorily created and deriving its authority from Ohio Revised Code Chapter 4121 and 4123. The Bureau represents that the appointment of the Investment Manager by the Bureau with respect to the investment of the assets allocated to the Investment Account, has been duly authorized by the Administrator pursuant to Ohio Revised Code

4121.121(B)(7), 4123.44 and The Ohio Bureau of Workers' Compensation Statement of Investment Policy and Guidelines. The Bureau further represents that the terms of this Agreement do no violate any obligations by which the Bureau is bound, whether arising by operation of rule or law.

13. Indemnification. The Investment Manger shall be liable for and shall indemnify the Bureau against any and all losses, damages, costs, expenses (including reasonable attorney fees), liabilities, claims and demands for any action, omission, information or recommendation in connection with the Agreement constituting a breach or violation of its fiduciary duties under applicable law, or a material breach of any agreement, representation, warranty or covenant made herein by the Investment Manager or its agents, except that the Investment Manger shall have no liability hereunder in the absence of negligence or reckless or willful misconduct on the part of itself or its agents. Subject to applicable law, the Investment Manager shall not be liable for any loss incurred in connection with the Investment Account due to bona fide (good faith) errors in judgment after having previously considered with due care the merits of any particular investment or investment strategy. If the Investment Manager makes any investment in violation of this Agreement and the guidelines set forth herein, such investment shall be sold and upon sale the following shall occur: (1) if such sale resulted in a

gain, the proceeds and any gain shall be credited to the Investment Account; or (2) if such sale resulted in a loss, the Investment Manager shall credit the Investment Account for the full amount of the loss.

14. Confidential Information. All information regarding operations and investments of the Bureau shall be regarded as confidential by the Investment in Manager and shall not be disclosed except as authorized in writing by the Bureau or otherwise required by law. Specifically, the Investment Manager and any person in its employ who has knowledge of the amount and kind of transactions entered into on behalf of the Bureau, shall not disclose the purpose or substance of the transaction while in progress. Upon completion of such transactions and the reporting of the completed transactions to the Bureau in the normal monthly reporting, the information may be disclosed as authorized in writing by the Bureau or as required by law.

15. Merger and Order of Priorities. It is mutually understood and expressly agreed that the provisions of the Bureau's Request for Proposals and the Investment Manager's response thereto are incorporated by references, and together with this Agreement, contain the entire agreement between the parties. The parties have entered into no agreements, express or implied, other than this Agreement. To the extent that any terms and

provisions of this writing conflict with and cannot be reconciled with the Request for Proposal or with the proposal submitted, the terms and provisions of this Agreement shall control.

16. Amendments, Modifications, Supplements and Headings. The parties may, by mutual agreement, amend, modify, supplement or rescind the terms of this Agreement. The term "this Agreement" shall be deemed to include any such future amendments, modifications, and supplements. Any such amendment, modification, supplement or rescission shall not be effective unless expressed in writing and signed by the parties hereto. The headings in this Agreement are for convenience only and are not intended to be part of, or to affect the interpretation of, the terms of this Agreement.

17. Termination. This Agreement may be terminated without any penalty at any time by either party upon thirty (30) days written notice. The Bureau may terminate this Agreement immediately upon breach or default by the investment Manager of any terms of this Agreement, any terms of the Request for Proposal, and any terms of the Investment Manger's response thereto, unless in the event of a breach that is subject to cure, the Investment Manger has cured such breach to the Bureau's satisfaction within fifteen (15) days from date notice of the breach was given by the Bureau.

In the event the Bureau exercises its right to terminate this Agreement, the Investment Manager shall not be relieved of any liability for damages sustained by the Bureau by virtue of any breach by the Investment Manger to the extent of remuneration paid and payable pursuant to this Agreement. The Bureau shall not be liable for any further claims, and the claims submitted by the Investment Manager shall not exceed the total amount of consideration stated in this Agreement. The Bureau may withhold payment due to the investment Manager pursuant to this Agreement or otherwise, for the purpose of set-off until such time as damages due to the Bureau are determined. The Investment Manager, upon receipt of notice of termination is permitted to complete transactions in progress but shall cease commencing any new transactions and take all necessary or appropriate steps to minimize costs, and furnish a report, as of the date of receipt of notice of termination describing the status of all transactions pursuant to this Agreement, as the Bureau may require. In the event of termination of this Agreement, any documentation in the form of reports and analysis provided by the Investment Manager which fulfills any obligation of this Agreement shall be considered the property of the Bureau with the exception of any copyrighted notes, software developed by the Investment Manager to be used in the course of the Investment Manager daily operations to monitor and assist in the management of client accounts and other generic

documents prepared for distribution to Investment Manager's clients for general informational purposes.

The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights and remedies available to either party at law or in equity.

18. Default By The Investment Manager. The Bureau declares and the Investment Manager acknowledges that a default shall occur in the event in Investment Manager does not perform in accordance with the performance measures identified in the Statement of Investment Policy and Guidelines, or under-performs when compared to comparable managers in the particular sector as identified in the Performance Standards Section of Schedule A and the Bureau may terminate the Agreement. The Bureau declares and the Investment Manager acknowledges that a default shall occur in the event there is a change in the firm structure, including a change in the investment focus or a material change in personnel in the Bureau may terminate the Agreement. The Bureau declares and the Investment Manager acknowledges that a default shall occur in the event the Investment Manger becomes subject to regulatory or legal proceedings which the Bureau judges to be injurious to the Bureau or to its fiduciary duties, and the Bureau may terminate the Agreement.

19. No Additional Waiver implied. If the Investment Manager fails to perform an obligation or obligations under the Agreement or otherwise is in default and thereafter such failure or default is waived by the Bureau, such waiver shall be limited to the particular failure are default so waived and shall not be deemed to waive other failure or default hereunder. Waiver by the Bureau shall not be effective unless it is in writing.

20. Governing Law - Severability. The validity, construction and performance of the Agreement and the legal relations among the parties to the Agreement, shall be governed by and construed in accordance with the laws of the State of Ohio. If any provision of the Agreement of the application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Agreement shall remain in full force and effect. The parties agree to submit irrevocably to the jurisdiction of Ohio courts.

21. Publicity. Any use or reference to this Agreement by the Investment Manager to promote, solicit, or disseminate information regarding the scope of the Agreement is prohibited, unless otherwise agreed to in writing by the Bureau. The Bureau agrees to be used as a reference by the Investment Manager in other State of Ohio competitive bidding situations.

22. Conditions Precedent. It is expressly understood by the parties any resulting Agreement is not binding on the Bureau until such time as all necessary funds are made available and forthcoming from the appropriate state agencies, and when required, such expenditure of funds is approved by the Bureau.

23. Nondiscrimination. The hiring of employees for the performance of work under this Agreement shall be done in accordance with Ohio Revised Code Sections 153.59 and 153.591, and the Governor's Executive Order of January 27, 1972 and the Govern's amended Executive Order 84-9 of November 30, 1984. The Investment Manager shall not discriminate against or intimidate any person hired for the performance of the work by reason of race, color, religion, national origin, ancestry, sex, handicap, or disability, as such term is defined in the Americans with Disabilities Act. For any violation, the Investment Manager shall suffer such penalties as provided for in the Ohio Revised Code Section 153.60 and the Governor's Executive Order of January 27, 1972, or otherwise provided by law.

24. Drug-Free Workplace. The Investment Manager agrees to comply with all applicable state and federal laws regarding drug-free workplace. Investment Manage shall make a good faith effort to ensure that all its employees, if working on state property, will not purchase, use or possess illegal

drugs or alcohol or abuse prescription drugs in any way.

25. Time of Performance. The Agreement shall be binding upon both parties upon receipt by the Investment Manager of a copy of a fully executed agreement and compliance with any and all conditions precedent, except the services may commence on such later date as the Bureau may establish by written notification to the Investment Manager. The Bureau acknowledges receipt of the Investment Manager's ADV form, Part II, as currently filed, at least forty-eight (48) hours prior to entering into this Agreement.

26. Notification. All notices, instructions or report required or permitted under this Agreement shall be deemed to have been properly given if sent by regular U.S. Mail, first class postage prepaid, addressed as follows:

As to the Bureau:

Robert G. Cowman
Chief Investment Officer
30 West Spring Street, L 27
Columbus, Ohio 43215-2258

As to the Investment Manager:

Mark D. Lay
MDL Capital Management, Inc.

225 Ross Street, Third Floor
Pittsburgh, Pennsylvania 15219

27. Food and Beverage. Investment Manager shall provide necessary food and beverages at or associated with training or information sessions provided or conducted by the Investment Manager with the Oversight Commission or staff held outside of Columbus, Ohio.

28. Year 2000 Compliance. Investment Manager guarantees that all services provided under this Agreement will be "year 200 compliant" by December 1998, meaning that all services are designed to operate without regard to the turning of the century and that any process involved in these services which involves dates will operate in a manner that takes into account dates occurring before and after the turning of the century and that any process involved in these services creates, processes and stores dates in a format that accurately reflects whether the date is before or after the year 2000.

Proof of compliance shall be sent to the Bureau and shall indicate the date of implementation and describe in detail the upgraded software used in managing the funds and any necessary upgrades to the firewalls and operating systems. Failure to make adequate assurance by the above listed date shall be deemed a breach and shall terminate this Agreement. The provisions of this

paragraph shall survive any termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereunto affix their signatures this 14th day of May 1998.

MDL CAPITAL MANAGEMENT, INC.
TAX ID# : 25-1700296
S/ Mark D. Lay
Name: Mark D. Lay
Title: Chairman & CEO

STATE OF OHIO, BUREAU OF WORKER' COMPENSATION
TAX ID # 31-1334167
S/ James Conrad
James Conrad
Administrator

SCHEDULE A TO
INVESTMENT MANAGEMENT AGREEMENT

Client: State of Ohio, Bureau of Workers' Compensation
Investment Manager: MDL Capital Management

INVESTMENT GUIDELINES
Active Duration Fixed Income Management

Statement of Purpose
The purpose of these guidelines is to:

- establish the investment objective and performance standards of the Investment Account,
- ensure the investment Manager has the capability evaluate the risk of the financial instruments in which the Investment Account is vested, and
- prevent Investment Manager from exposing the Investment Account to excessive overall levels if risk exposure to inappropriate risk sources, or disproportionate exposure to any one risk source.

Investment Objective
The basic objective is to attain the highest total return consistent with a reasonable degree of risk by investing in fixed income securities. Success in achieving that objective will be measure by comparing the risk adjusted return and the after-

fee return of the Investment Account to the Lehman Brother Aggregated Bond Index.

Investment Guidelines

Investment Manager will manage a high quality, diversified fixed income Investment Account consistent with the Investment Account objectives outlined above in compliance with the Guidelines state below. Investment Manager will have full discretion to manage this Investment Account subject to Chapter 4123 of the Ohio Revised Code, the Bureau's Investment Policy, and the maturity credit diversification and marketability guidelines contained herein.

Eligible Securities

- Securities issued by U.S. corporations where both principal and interest are denominated and payable in U.S. dollars are permitted.
- With the exception of U.S. Treasury, Agency and Instrumentality securities, the maximum allocation of Investment Account market value to all classes of securities of any one issuer is 5% at the time of purchase (3% for entities with securities rated below A)
- Custodial Agent's STIF account and commercial paper rated at least A-1 or P-1 are permitted up to 10% of the market value of the Investment Account at the time of purchase. Repurchase agreements are permitted, provided that the collateral is delivered into the Investment Account, and

that the collateral would otherwise be eligible for direct purchase under these guidelines.

- Mortgage dollar rolls are permitted as long as there is sufficient case equivalents and short duration (under one year) securities in the Investment Account to offset the purchase cost of the rolls. No leverage permitted.
- Agency and non-agency mortgage securities are limited to pass-through securities, sequentials, CMOs, PACs, Ios, ARMs, CMBSs and multifamily securities.
- 144A securities are eligible as long as they have registration rights.
- Use of convertible bonds, convertible preferred stocks and preferred stocks are not permitted except for securities such as bank trust preferreds which have a stated final maturity date.

Prohibited Securities

- Dollar denominated foreign debt securities such as Yankees and Brady Bonds are prohibited.
- Securities denominated in currencies other than the U.S. dollar (non-dollar bonds) are prohibited.
- Private placement are prohibited except for 144A securities with registration.
- High yield securities are prohibited

- Use of inverse floaters, other exotic derivatives and reverse repurchase agreement is prohibited.
- 144A securities without registration rights are prohibited.
- Use of Eurodollar futures and options is prohibited.
- Use of listed U.S. fixed income futures and options contracts is prohibited.

Credit Quality

- The overall average Investment Account quality will be maintained at A or higher, as defined by Standard & Poor's. The minimum quality per security is BBB at the time of purchase by Standard & Poor's, Moody's, Duff & Phelps, or Fitch. In the case of split rated securities, the lowest rating will be used to determine eligibility.

Duration Range

- In no case, will the Investment Account's effective duration be outside of 50% corridor around the benchmark's effective duration (i.e. with 50% - 150% of benchmark's effective durations).

Designated Benchmark

Performance results will be monitored and evaluated on a quarterly basis against the Lehman Brothers Aggregated Bond Index.

Performance Standards
The value-added performance objective above the stated benchmark is outline below:

Benchmark	**Value-Added Per Annum**
Lehman Brothers Aggregated Bond Index	75

Time Horizon
3 and 5 year
rolling periods

The secondary performance objective of this Investment Account will be to place above the median manager of Callan's Active Duration Style Group or other institutionally managed active duration fixed income accounts over rolling 3 and 5 year periods as designated by the Bureau. The Investment Manger will be provided with all necessary analytics to understand and monitor this benchmark.

Personnel/Style
Continuity in personnel is vitally important to a successful investment management program. It is understood that any changes in key personnel, investment management philosophy, style, or approach, and significant changes in ownership affiliations, organizational structure, financial condition or clientele will be discussed in detail with the Bureau's Chief Investment Officer.

Additional and Withdrawals from the Investment Account

The Bureau may at any time make additions to and withdrawals from the Investment Account in such amounts as the Bureau shall deem appropriate, provided that all withdrawals and additions shall be made after giving the Investment Manager timely notices. Notice of withdrawals shall be considered timely if communicated to the Investment Manager no less than 10 business days prior to the withdrawal date. Notice of additions shall be considered timely if communicated to the Investment Manager no less than two business days prior to the date of deposit. The Investment Manager will notify the Bureau immediately if they are unable to comply with the withdrawal request or notice of addition to the Investment Account.

Data Requirements and Reports

The Investment Manager will provide monthly reports on the Investment Account to the Chief Investment Officer of the Bureau. These reports shall include a summary of Investment Account holds, transactions, performance, compliance with the Bureau Guidelines, and analytics on diversification and risk measures. The performance and holding information is to be delivered no later than two weeks after the end of the month.

In addition to the monthly reporting required above, the Investment Manager will send the Bureau a quarterly report which list the dollar

amount of transactions done with each broker used for the Bureau's transactions. This report should separate the brokers and give subtotals for the Ohio qualified broker, minority brokers, and national brokers. The quarterly report should also detail any soft dollar services received for Bureau transactions; and any commission recapture arrangements should be disclosed. The quarterly reports are to be delivered no later than three weeks after the end of the month.

The Investment Manager will also provide any other reports reasonably requested by the Bureau. These reports are to be provided to the Bureau and other recipients as directed by the Bureau.

Meetings

Performance review and investment strategy meetings will be held on a semi-annual basis.

Fiduciary Responsibility

The Investment Manager accepts full responsibility for the Bureau's assets under its management under the Ohio Revised Code and any applicable federal and state law.

Investment Policy Amendments

If any item, guideline or constraint within these Investment Guidelines proves to be too restrictive in practice, it will be the Investment Manager's responsibility to prepare a modification and/or amendment to that specific item in writing for

consideration by the Bureau's Chief Investment Officer.

Access to Records
The Bureau and the Bureau's auditors will have reasonable access to Investment Manager's records during normal business hours upon reasonable prior notice.

Conflict of Interest
Investment activities should be conducted in manner consistent with the Code of Ethics and the Standards of Professional Conduct adopted by the Association of Investment Management and Research.

SCHEDULE B TO INVESTMENT MANAGEMENT AGREEMENT

Client: State of Ohio, Bureau of Workers' Compensation
Investment Manager: MDL Capital Management, Inc.

INVESTMENT MANAGEMENT FEE

For Investment management services provided, the Bureau will pay Investment Manager an annual fee in accordance with the following based on the Investment Account Average Assets. Such fee shall be paid quarterly in arrears upon invoice and prorated on a daily basis for any quarterly period

during which the Agreement is in effect for only a portion of the quarter. Average Assets shall be determined by computing the market value Investment Account assets on the last business day of the calendar quarter. The market value of the Investment Account assets shall be based on the reports supplied by the Bureau.

Annual Fee

.30% on the first $25 million
.25% on the next $50 million
.20% on the next $100 million

This purely asset-based fee schedule shall not exceed any purely asset-based fee schedule of the investment Manager's other discretionary accounts: (a) managed in accordance with substantially identical investment guidelines and objectives; (b)of comparable size; and © of clients which became clients of the Investment Manager after May1, 1998.

SCHEDULE C TO
INVESTMENT MANAGEMENT AGREEMENT

Client: State of Ohio, Bureau of Workers' Compensation
Investment Manager: MDL Capital Management, Inc.

TRANSACTION PROCEDURE

The Investment Manager will have full discretion, subject to the Guidelines of the Investment Manager Agreement and Schedules and the Bureau's Investment Policy, when making security transactions. When the Investment Manager executes a sale transaction, it will notify the Bureau's designated Security Lending Agent. Upon execution of any transaction (purchase or sell) the Investment Manager will complete a trade ticket which will include information regarding the Approved Broker, the dollar amount, the security description, the trade/settlement dates, and special delivery instructions. Each trade ticket will be faxed to the Bureau's Investment Department no later than Trade Date plus one day. In addition, the Investment Manager will inform the Bureau's Investment Department by phone of each fax sent regarding a transaction. The Investment Manager will inform the Approved Broker to enter all transactions to the DTC ID system or other electronic system, whether the security is eligible for DTC settlement or not. The Investment Manager will receive detailed settlement instructions from the Bureau. If confirmation is not available on the DTC system, the Investment Manager will require the broker to send a confirm to the Bureau. The Bureau will affirm all transactions with DTC once trade information has been verified by the Investment Manager. The settlement of all transactions will be the responsibility of the Bureau's

Custodian who will contact the Bureau's Investment Department who will then notify the Investment Manager. It will be the Investment Manager's responsibility to correct all fails caused by the broker selected by the Manager. Fails caused by the Bureau's Custodian will be corrected by the Bureau.

Proceeds Received from sales, expenditures made for purchase, and income earned on the assets in the Investment Account will be charged to or deposited in the Investment Manager's account with the Bureau's Custodian. The Bureau will manage the cash in the Investment Manager's Custodial Account. Currently the only investment vehicle available for the investment of cash is the Custodian's STIF account. It is the Investment Manager's responsibility to ensure there are enough cash equivalents or sale proceeds to cover purchases made by the Investment Manager. It will be the responsibility of the Investment Manager to ensure that no overdraft occurs in the Investment Manager's Custodial Account. However, should the Investment Manager overdraw the Custodial Account, the Investment Manager will, at it's own expense, remedy the overdraft as soon as possible.

INVESTMENT ADVISORY AGREEMENT

THIS INVESTMENT ADVISORY AGREEMENT ("Agreement"), made as of the 18th day of November, 2002, between **MDL ACTIVE DURATION FUND, LTD.**, an excepted company incorporated under the laws of Bermuda (the "Company"), and **MDL CAPITAL MANAGEMENT, INC.** a Pennsylvania corporation (the "Investment Adviser").

RECITALS

A. The Company was incorporated in Bermuda on May 20, 2002 as an investment vehicle through which United States tax exempt investors and non-United States resident investors can invest in a portfolio consisting primarily of government, corporate and mortgage-backed fixed income securities as more fully described in the Company's Confidential Private Placement Memorandum dated December 2, 2002, as the same may be amended, restated or supplemented from time to time (the "Memorandum").

B. The Company desires to retain the Investment Adviser, which is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act") as the investment adviser for the Fund.

C. The Investment Adviser desires to accept such retainer upon the terms and conditions set forth herein.

D. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the Memorandum.

NOW, THEREFORE, the Company and the Investment Adviser do mutually promise and agree as follows:

1. **Investment Advisory Services**. The Company hereby employs the Investment Advisor to manage the investment and reinvestment of the assets of the Company and to administer its business and administrative operations, subject to the discretion of the Board of Directors of the Company (the "Board of Directors"), for the period and on the terms set forth in this Agreement. The Investment Adviser herebty accepts such employment for the compensation herein provided and agrees during such period to render the services and to assume the obligation herein set forth.

2. **Authority of the Investment Advisor**. The Investment Advisor shall for all purposes herein be deemed to be an independent contractor and shall, unless otherwise expressly provided or authorized, have no authority to act for or represent the Company or the Fund in any way or

otherwise be deemed an agent of the Company or the Fund. However, one or more shareholders, officers, directors or employees of the Investment Advisor may serve as directors and/or officers of the Company, but without compensation or reimbursement of expenses for such services from the Company. Nothing herein contained shall be deemed to require the Company to take any action contrary to its Memorandum of Associates or Bye-Laws, as amended, restated or supplemented, or any applicable statute or regulation, or to relieve or deprive the Board of Directors of its responsibility and control of the affairs of the Company.

3. **Obligations of and Services to be Provided by the Investment Adviser**. The Investment Adviser undertakes to provide the services hereinafter set forth and to assume the following obligations;

(A) Management and Administrative Services

(1) The Investment Adviser, at its own expense and without reimbursement from the Company, shall furnish adequate office space , which may be space within the offices of the Investment Adviser or in such other place as may be agreed upon from time to time, and all office facilities and equipment as may be reasonably required for performing services relating to to

advisory, research, asset allocation, portfolio manager selection and evaluation activities and otherwise managing and administering investments of the Company.

(2) The Investment Adviser shall employ or provide and compensate the executive, administrative, secretarial and clerical personnel necessary to supervise the provision of the services set forth in sub-paragraph 3(A)(1)and shall bear the expense of providing such services, except as provided in Section 4 of this Agreement. The Investment Adviser shall also compensate all directors, officers and employees of the Company who are directors, officers or employees of the Investment Adviser or its affiliated companies.

(B) Investment Advisory Services

(1) The Investment Adviser shall, subject to and in accordance with the Investment Policy of the Company as set forth in the Memorandum and any directions which the Board of Directors may issue to the Investment Adviser, have overall responsibility and discretion for the general management and investment of the assts and securities portfolios of the Company, including without limitations selecting and evaluating investment of the Company's assets and investing through the Master Fund.

(2) The Investment Adviser shall develop overall investment programs and strategies for the company consistent with the Investment Policy, shall revise such programs as necessary, and shall monitor and report periodically to the Board of Directors concerning the implementation of the programs.

(3) Subject to the supervision of the Company's Board of Directors and at all times in accordance with the Investment Policy as set forth in the Memorandum, the Investment Adviser is authorized to:

(a) effect purchase, sales and other transactions using the assets of the Company.

(b) direct custodians to deliver funds or securities for the purpose of effecting transactions, and to instruct custodians to exercise or abstain from exercising any privilege or right attaching to such assets;

(c) make all decisions relating to the manner, method and timing of investment transactions, and to select brokers and dealers for the execution, clearance and settlement of any transactions;

(d) enter into, make and perform all contracts, agreements and other undertakings as may in the opinion of the Investment Adviser be

necessary or advisable or incidental to the carrying out of the objectives of this Agreement including an administrative services agreement, custodian agreement and others;

(e) trade on margin, to borrow from banks, brokers or other financial institutions and to pledge assets of the Company in connection therewith;

(f) retain consultants or other service providers to the Company; and

(g) make and execute, in the name and on behalf of the Company, all such documents (including, without limitation, customer agreements and other documents in connection with the establishment and maintenance of brokerage accounts) and to take all such other actions which the Investment Adviser considers necessary or advisable to carry out its investment management duties hereunder. With regard to any documents or agreements executed in the Company' s name, copies will be promptly provided to the Company and the Administrator so as to advise the Company and the Administrator of the existence of such documents and agreements and apprise them of any obligations thereunder.

(4) The Investment Adviser shall render to the Board of Directors such periodic reports concerning the business and investments of the Fund as the Board of Directors shall reasonably request.

(5) The Investment Adviser shall take such appropriate actions and maintain such procedures as are reasonably necessary to ensure that assets of the Company ar not purchade from or sold to a "party in interest" as the term is defined in the Employment Retirement Income Security Act of 1974, as amended ("ERISA") other than as may be permissible pursuant to any applicable provisions of ERISA or appropriate prohibited transaction exemptions of the United States Department of Labor (the "DOL").

In exercising its rights and carrying out its duties hereunder, the Investment Adviser is authorized to act for the Company and on the Company's behalf within the scope of this Agreement either itself or wholly or in part through its authorized dealers or delegates in the same manner and with the same force and effect as the Company might or could do.

(C) Provision of Information Necessary for Preparation of Securities Registration Statements, Amendments and Other Materials. The Investment Adviser will make available and provide financial, accounting and statistical information required by the Company for the preparation of filings, reports and other documents required by federal and state securities laws, and with such information as the Company may reasonably request for use in the preparation of such documents or of other

materials necessary or helpful for the offering and sale of the Company's shares.

(D) Provisions of Personnel. The Investment Adviser shall make available its offices and employees to the Board of directors of the Company for consultation and discussions regarding the administration and management of the Company and its investment activities.

4. **Expenses**. The Investment Adviser shall not be required to pay any expenses of the Company except as provided herein. The expense of the Fund's operations borne by the Company include by way of illustration and not limitation, director and officer liability insurance, reports to shareholders, reports to government authorities, interest charges, reimbursement payments to securities lenders for dividend and interest payments on securities sold short, taxes, legal expenses, auditing and accounting services, insurance premiums, brokerage and other expenses connected with the execution of portfolio securities transactions, fees and expenses of dividend disbursing agents, registrars and stock transfer agents and the cost of keeping all necessary shareholder records and accounts.

5. **Compensation of the Investment Adviser**.

(A) Management Fee. For services and facilities to be rendered and the charges and

expenses to be assumed by the Investment Adviser hereunder, the Company shall pay to the Investment Adviser a management fee, accrued monthly and paid quarterly ("Management Fee"). The Management Fee shall be calculated at an annual rate of 1% of the net assets of the Fund as of the last Business Day of each calendar month. For any month in which this Agreement is not in effect for the entire month, such fee shall be reduced proportionately on the basis of the number of calendar days during which it is in effect and the fee computed upon the net assets on the last Business Day during which it is so in effect. The Investment Adviser may, in its sole discretion, effectively waive all or any part of the Management Fee due with respect to any shareholder's investment, by rebate or otherwise.

(B) Incentive Fee. The Investment Adviser is also entitled to receive a quarterly performance-based fee from the Company, calculated on a Series-by-Series basis, in an amount equal to 20% of the appreciation of each Series' Net Asset Value with respect to a particular calendar quarter in excess of the Hurdle (as defined herein) for that quarter (the "Incentive Fee"). The Hurdle with respect to a calendar quarter means an amount equal to the opening Nett Asset Value of the relevant Series for such calculation period multiplied by a percentage based on the return of the Lehman Brother Government Credit Bond Index for the calculation period (the"Hurdle"). The

Hurdle return will be prorated for any calculation period of less than a calendar quarter. The Incentive Fee is calculated on a Series-by-Series basis in an effort to ensure that Incentive Fees are equitably assessed among shareholders. The Incentive Fee, if any is calculated and payable (i) as of the last Business Day of each calendar quarter, (ii) as of each Redemption Date with respect to the Shares redeemed by redeeming shareholders, (iii) in the Company's sole discretion, as of the effective date of transfer of Shares, and (iv) as of the date of termination of this Agreement, in each case with respect to the period then ending. All fees and expenses (except the Incentive Fee) that have been accrued or paid (but not previously accrued) for a given period are deducted prior to calculating the Incentive Fees for such period, including, without limitation, the Management Fee. Appropriate adjustments are to be made to account for subscriptions and redemptions. The Investment Adviser, in its sole discretion, may effectively waive all or part of its Incentive Fee otherwise due with respect to any shareholder's investment, by rebate or otherwise.

(C) High Water Mark. The Incentive Fee with respect to a Series of Shares is calculated on a cumulative basis and is payable only where the Net Asset Value per Share of that Series has risen above (i) the higher of the issue price of the Shares in the relevant Series or, (ii) the Net Asset Value per share of the relevant Series immediately following

the last calculation of an Incentive Fee with respect to such Series plus the amount of the Hurdle for such period and net of the Incentive Fees calculated abd payable at such time. In effect, the Incentive Fee payable with respect to a Series is not payable until all prior net losses with respect to such Series (including the cumulative Hurdle amount and excluding the Incentive Fee from the calculation of net losses) are recouped. Appropriate adjustments shall be made to account for subscriptions and redemptions.

(D) Deferral. Notwithstanding the foregoing, the Investment Adviser may elect prior to the commencement of the Company's trading activities with respect to its first year of trading and prior to the commencement of each calendar year thereafter, to defer for a period of up to ten years payment of all or any portion of its Management Fees and Incentive Fees earned with respect to that subscription period. In such case, the deferred amount will appreciate or depreciate based, at the election of the Investment Adviser, on either (i) the subsequent performance of the Fund (before Management and Incentive Fees), or (ii) the performance of any other investment chosen by the Investment Adviser prior to the commencement of the deferral period. An accounting of any such deferred fees and their investment performance shall be made at the end of each calendar year by the Company. Notwithstanding anything contained herein to the

contrary, the Company may enter into other deferred compensation arrangements with regard to the deferred Management and/or Incentive Fees including, without limitation, arrangements properly referred to as "rabbi trusts." Any deferred fees will not be charged a Management Fee or Incentive Fee. The deferred fees will be reflected on the books of the Company as a liability and will reduce the Company's Net Asset Value, but will not be treated as "leverage" for purposes of any leverage limitations imposed on the Company. On the date of expiration of the deferral period, dissolution of the Company or termination of the Agreement by the Company, all applicable deferred fees, if any, held by the Company on behalf of the Investment Adviser will be paid to the Investment Adviser. Upon termination of the Agreement by the Investment Adviser, fees elected to be deferred by it will remain in the Company until the earlier of the end of the deferral period or the dissolution of the Company.

(E) Payment of Management Fee and Incentive Fee. Both the Management Fee and the Incentive Fee are payable by the Company to the Investment Adviser within a reasonable time after each becomes due. Payment of the Incentive Fee, however, will be subject to adjustment upon completion of the audit of the Company's financial statements for the fiscal year in which the Incentive Fee accrues. If the Incentive Fee paid for a fiscal year was higher or lower than Incentive Fee that

actually was due, an appropriate adjustment will be made and payment will be made within a reasonable time after completion of the audit.

6. **Exclusivity; Services to Other Clients**. The Company acknowledges the Investment Adviser performs investment advisory services for various other clients and that the Investment Adviser may give advice and take action with respect to any of its other clients that differs from the advice given or timing or nature of action taken with respect to the Company. The Company further acknowledges that the Investment Adviser may from time to time invest the Company's assets in securities also purchased by other clients of the Investment Adviser. The Investment Adviser will, under normal conditions, allocate investment opportunities to the Company over a period of time on a fair and equitable basis relative to its other clients, subject to applicable laws. The Company acknowledges and agrees that the Investment Adviser shall not have any obligation to purchase or sell for the Company any securities that the Investment Adviser, its principals, affiliates or employees, may purchase or sell for their own accounts or for the account of any other client. In Certain circumstances, the Investment Adviser may from form other pooled investment vehicles, including the Master Fund, for the purpose of making investments or a particular investment and may cause the Company to invest in such investment vehicles. The Investment Adviser and other clients

of the Investment Adviser may also invest in such investment vehicles. Although the Investment Adviser has agreed to permit the Company to use the name "MDL", if it so desires, it is understood and agreed that the Investment Adviser reserves the right to use and to permit other persons, firms or corporations, including investment companies, to use such name.

7. **Exculpation and Indemnification**.

(A) Exculpation. In the absence of fraud, willful default, bad faith, gross negligence or reckless disregard of obligations or duties hereunder on the part of the Investment Adviser or any shareholder, agent, director, officer or affiliate thereof ("Investment Adviser Affiliates"), neither the Investment Adviser nor any the Investment Adviser Affiliate shall be subject to liability to the Company or to any shareholder of the Company for any act or omission in the course of, or connected with, rendering services hereunder, or for any losses that may be sustained in the purchase, holding or sale of any security, provided, however, that the limitation of liability contained in this Section 7(A) shall not apply to any liability, costs or expenses imposed on the Investment Adviser or any Investment Adviser Affiliate under ERISA.

(B) Indemnification. Except as otherwise required by law or the provisions of this Agreement, the Company shall indemnify, defend and hold harmless the Investment Adviser and each

Investment Adviser Affiliate (severally, an "Indemnified Person") from and against any losses, liabilities, damages, costs or expenses (including, without limitation, reasonable attorney fees and expenses in connection therewith and amounts paid in settlement thereof) to which any of such Indemnified Persons may directly or indirectly become subject, in connection with (a) any act or failure to act or any alleged act or failure to act arising out of, in connection with or related to the Company, or (b) the affairs of the Company, but only to the extent that such Indemnified Person (x) was neither grossly negligent nor engaged in fraud, bad faith or reckless disregard of obligations or duties hereunder, (y)did not willfully breach any material term or provision of this Agreement and (z) did not willfully violate any material law relating to the Company; provided, however, that the indemnification contained in this Section 7(B) shall not apply to any liabilities, costs or expenses imposed on the Investment Adviser or any other Indemnified Person under the Securities Act (to the extent such indemnification is determined to be contrary to public policy) or under ERISA. The Company shall pay the expenses incurred by any such Indemnified Person in connection with any proceeding in advance of the disposition of such matter by a court of competent jurisdiction upon receipt of a written undertaking by such Indemnified Person to repay the full amount advanced if there is a determination by any such

court that such Indemnified Person is not entitled to indemnification with respect thereto.

8. **Brokerage Commission**. The Investment Adviser, subject to the control and direction of the Board of Directors, shall have authority and discretion to select brokers and dealers to execute portfolio transactions for the Company and for the selection of the markets on or in which the transactions will be executed. The Investment Adviser may cause the Company to pay a broker-dealer which provides brokerage and research services, as such services are defined in Section 28(e) of the Securities Exchange Act of 1934 (the "Exchange Act"), to the Investment Adviser a commissions for effecting a securities transactions in excess of the amount another broker-dealer would have charged for effecting such transactions, if the Investment Adviser determines in good faith that such amount of commission is reasonable in relation to the value of brokerage and research services provided by the executing broker-dealer viewed in terms of either that particular transaction or its overall responsibilities with respect to the accounts as to which it exercises investment discretion (as defined in Section 3(a)(35) of the Exchange Act). The Investment Adviser shall provide such reports as the Board of Directors may reasonably request with respect to the Company's total brokerage.

9. **Representations and Acknowledgments of Investment Adviser**. The Investment Manager represents and warrants that it is an investment adviser as defined under the Advisers Act and is registered under the Advisers Act. The Investment Adviser also acknowledges that it is a fiduciary with respect to the Company and assumes the duties, responsibilities and obligations of a fiduciary under ERISA. The Investment Adviser further represents and warrants that:

(A) The Investment Adviser complies with the bonding requirements of Section 412 of ERISA and satisfies similar bonding requirements under state or Federal law.

(B) The Investment Adviser has complied and will continue to comply with all regulations, registrations, filings, approvals, authorizations, consents or examinations required by the United States Securities and Exchange Commission, the DOL, or any other governmental authority having jurisdiction over the activities contemplated by this Agreement.

U.S. Department of Justice
Office of the Solicitor General

Acting Solicitor General Washington, D.C. 20530

December 23, 2010

Percy Squire, Esq.
Percy Squire, Co., LLC
514 S. High Street
Columbus, Ohio 43215

Re: Mark D. Lay v. United States,
S. Ct. No. 10-695

Dear Mr. Squire:

As requested in your letter December 20, 2010, I hereby consent to the filing of amicus curiae brief in the above-captioned case on behalf of Samuel S. Paschall, Eric Carmichael, Gerald Sherwin, Orin Grimes, National Association of Investment Companies, Pascal Nardelli, Charles Zappala, Tracy Foster, Leroy Thomspon, Chuck Sanders, Bruce T. Goode, James C. Roddey, Joe Orlando, James Hardiman, Bobby Law, and Claude Anderson.

Due to continuing delay in receiving incoming mail at the Department of Justice, in addition to mailing your brief via first class mail, we

would appreciate a fax or e-mail copy of your brief. If that is acceptable to you, please fax your brief to Emily C. Spadoni, Supervisor Case Management, Office of the Solicitor General at (202) 514-8844, or email at SupremeCtBriefs@USDOJ.gov. Ms. Spadoni's direct dial phone number is (202) 514-2217 or 2218.

Very truly yours,
S/ Neal Kumar Katyal
Neal Kumar Katyal
Acting Solicitor General